

12-10-2008

# Harrison v. Certain Underwriters at Lloyd's Clerk's Record v. 1 Dckt. 35678

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LAW CLERK

IN THE  
SUPREME COURT  
OF THE  
STATE OF IDAHO

H. RAY HARRISON and JULIE HARRISON,  
husband and wife,

PLAINTIFFS-APPELLANTS,

vs.

CERTAIN UNDERWRITERS AT LLOYD'S  
LONDON SUBSCRIBING TO POLICY NO. 20056  
ISSUED TO JEFFREY HARTFORD, M.D.  
EFFECTIVE FROM JUNE 1, 2004 TO JUNE 1, 2005  
WITH AN RETROACTIVE EFFECTIVE DATE OF  
JUNE 1, 2003; NAS INSURANCE SERVICES, INC., a  
California corporation,

DEFENDANTS-RESPONDENTS.

*Appealed from the District Court of the Fourth Judicial  
District of the State of Idaho, in and for ADA County*

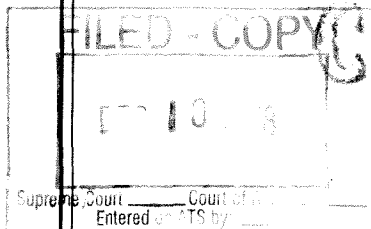
*Hon RONALD J. WILPER, District Judge*

ERICA S. PHILLIPS

*Attorney for Appellant*

JEFFREY A. THOMSON

*Attorney for Respondent*



55678

IN THE SUPREME COURT OF THE STATE OF IDAHO

H. RAY HARRISON and JULIE HARRISON,  
husband and wife,

Supreme Court Case No. 35678

Plaintiffs-Appellants,

vs.

CERTAIN UNDERWRITERS AT LLOYD'S  
LONDON SUBSCRIBING TO POLICY NO.  
20056 ISSUED TO JEFFREY HARTFORD, M.D.  
EFFECTIVE FROM JUNE 1, 2004 TO JUNE 1,  
2005 WITH AN RETROACTIVE EFFECTIVE  
DATE OF JUNE 1, 2003; NAS INSURANCE  
SERVICES, INC., a California corporation,

Defendants-Respondents.

CLERK'S RECORD ON APPEAL

Appeal from the District Court of the Fourth Judicial District, in and for the County of Ada.

HONORABLE RONALD J. WILPER

ERICA S. PHILLIPS

JEFFREY A. THOMSON

ATTORNEY FOR APPELLANT

ATTORNEY FOR RESPONDENT

BOISE, IDAHO

BOISE, IDAHO

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Date: 11/7/2008

10th Judicial District Court - Ada County

User: CCTHIEBJ

Time: 02:22 PM

ROA Report

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Case: CV-PI-2006-15687 Current Judge: Ronald J. Wilper

H Ray Harrison, etal. vs. Certain Underwriters At Lloyd's London, etal.

H Ray Harrison, Julie Harrison vs. Certain Underwriters At Lloyd's London, NAS Insurance Services Inc

Date	Code	User	Judge
8/25/2006	NCPI	CCWOODCL	New Case Filed - Personal Injury
	COMP	CCWOODCL	Complaint Filed
	SMFI	CCWOODCL	(2) Summons Filed
9/12/2006	MOTN	CCWRIGRM	Motion for Order Directing Service of Summons Outside the State of Idaho
	AFFD	CCWRIGRM	Affidavit of Eric S Rossman
9/13/2006	NOTC	CCWRIGRM	Notice of Complaint and Demand for Jury Trial and Declaratory Judgment
9/22/2006	ORDR	DCJOHNSI	Order for Service Outside State
10/6/2006	NOAP	CCDWONCP	Notice Of Appearance (Mark S Prusynski for Certain Underwriters at Lloyd's London and NAS Insurance Services Inc)
10/13/2006	SUBC	CCDWONCP	Notice of Substitution Of Counsel for Defendants
10/27/2006	AMCO	CCWOODCL	First Amended Complaint Filed and Demand for Jury Trial and Declaratory Judgment
	SMFI	CCWOODCL	(2) Amended Summons Filed
11/7/2006	ACCP	CCLEONCR	Acceptance Of Service 11-3-06
11/13/2006	ANSW	CCCHILER	Underwriters' Answer to First Amended Complaint and Demand for Jury Trial (J Thomson for Underwriters)
	MOTN	CCCHILER	Motion for Stay of Proceedings and to Compel Arbitration
	MEMO	CCCHILER	Memorandum in Support of Underwriters' Motion for Stay of Proceedings and to Compel Arbitration
	AFSM	CCCHILER	Affidavit of Jeffrey A Thomson In Support Of Underwriters' Motion for Stay of Proceedings and to Compel Arbitration
	NOHG	CCCHILER	Notice Of Hearing
	HRSC	CCCHILER	Hearing Scheduled (Hearing Scheduled 12/04/2006 04:00 PM) Motion for Stay
11/22/2006	AFOS	CCPRICDL	Affidavit Of Service 11.06.06
11/27/2006	MISC	CCWRIGRM	Plaintiffs Nonopposition to Underwriters Motion for Stay Proceedings and to Compel Arbitration
	ANSW	CCWRIGRM	NAS Answer to First Amended Complaint and Demand for Jury Trial
12/1/2006	ORDR	DCJOHNSI	Order Staying Proceedings and Compelling Arbitration
4/15/2008	ORDR	DCABBOSM	Order for Status Report
4/17/2008	MOTN	CCWATSCL	Plaintiffs/ Motion to Vacate Arbitrator's Award
	AFSM	CCWATSCL	Affidavit of Chad M. Nicholson In Support Of Motion
	AFSM	CCWATSCL	Affidavit of Eric S. Rossman In Support Of Motion
	MEMO	CCWATSCL	Memorandum in Support of Motion to Vacate Arbitrator's Award

00003

Date: 11/7/2008

North Judicial District Court - Ada County

User: CCTHIEBJ

Time: 02:22 PM

ROA Report

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Case: CV-PI-2006-15687 Current Judge: Ronald J. Wilper

H Ray Harrison, etal. vs. Certain Underwriters At Lloyd's London, etal.

H Ray Harrison, Julie Harrison vs. Certain Underwriters At Lloyd's London, NAS Insurance Services Inc

Date	Code	User	Judge
4/17/2008	NOHG	CCWATSCL	Notice Of Hearing
	HRSC	CCWATSCL	Hearing Scheduled (Motion 05/19/2008 02:00 PM)
4/25/2008	MOTN	CCTEELAL	Motion to Lift Stay of Proceedings
	APPL	CCTEELAL	Application for Confirmation of Arbitration Award
	NOHG	CCTEELAL	Notice Of Hearing on Motion to Lift Stay of Proceedings and Application for Confirmation of Arbitration Award
5/1/2008	AFSM	CCAMESLC	Affidavit In Support Of Application for Confirmation of Arbitration Award
5/5/2008	MEMO	CCTOONAL	Memorandum in Support of Application for Confirmation of Arbitration Award and Opposition to Plaintiffs' Motion to Vacate Arbitrator's Award
5/12/2008	AFFD	CCCHILER	Second Affidavit of Eric S Rossman in Support of Plaintiffs' Motion to Vacate Arbitrator's Award and in Opposition to Defendants' Application for Confirmation of Arbitration Award
	MEMO	CCCHILER	Memorandum in Opposition to Defendants' Application for Confirmation of Arbitration Award and Reply Memorandum in Support of Plaintiffs' Motion to Vacate Arbitrator's Award
5/15/2008	RPLY	CCWRIGRM	Memorandum in Opposition to Defendants' Application for Confirmation of Arbitration Award and Reply Memorandum in Support of Plaintiffs' Motion to Vacate Arbitrator's Award
	RPLY	CCWRIGRM	Reply to Plaintiffs Memorandum in Opposition to Defendants Application for Confirmation of Arbitration Award and Reply in Support of Plaintiffs Motion to Vacate Arbitrators Award
5/19/2008	DCHH	DCJOHNSI	Hearing result for Motion held on 05/19/2008 02:00 PM: District Court Hearing Held Court Reporter: Cromwell Number of Transcript Pages for this hearing estimated:50
5/27/2008	BREF	CCTEELAL	Post Hearing Brief RE Opposition to Motion Vacate Arbitration Award
	MEMO	CCCHILER	Supplemental Memorandum in Support of Plaintiffs' Motion to Vacate Arbitrator's Award
7/28/2008	ORDR	DCJOHNSI	Confirming Arbitration Award
	CDIS	DCJOHNSI	Civil Disposition entered for: Certain Underwriters At Lloyd's London, Defendant; NAS Insurance Services Inc, Defendant; Harrison, H Ray, Plaintiff; Harrison, Julie, Plaintiff. Filing date: 7/28/2008
	STAT	DCJOHNSI	STATUS CHANGED: Closed
8/11/2008	JDMT	DCJOHNSI	Judgment
8/22/2008	MEMO	CCBOYIDR	Memorandum of Attorney Fees

00004

Date: 11/7/2008

North Judicial District Court - Ada County

User: CCTHIEBJ

Time: 02:22 PM

ROA Report

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Case: CV-PI-2006-15687 Current Judge: Ronald J. Wilper

H Ray Harrison, etal. vs. Certain Underwriters At Lloyd's London, etal.

H Ray Harrison, Julie Harrison vs. Certain Underwriters At Lloyd's London, NAS Insurance Services Inc

Date	Code	User	Judge
8/22/2008	AFFD	CCBOYIDR	Affidavit in Support of Underwriters' Memorandum of Attorney Fees Ronald J. Wilper
	NOHG	CCBOYIDR	Notice Of Hearing Ronald J. Wilper
	HRSC	CCBOYIDR	Hearing Scheduled (Motion for Attorney fees and Costs 09/26/2008 04:00 PM) Ronald J. Wilper
	STAT	CCBOYIDR	STATUS CHANGED: Closed pending clerk action Ronald J. Wilper
9/5/2008	OPPO	MCBIEHKJ	Opposition to Memorandum of Attorney Fees Ronald J. Wilper
9/11/2008	HRVC	CCDWONCP	Hearing result for Motion for Attorney fees and Costs held on 09/26/2008 04:00 PM: Hearing Vacated Ronald J. Wilper
	HRSC	CCDWONCP	Amended Notice of Hearing (Defendant's Motion for Attorney fees - 10/03/2008 04:00 PM) Ronald J. Wilper
	APSC	CCTHIEBJ	Appealed To The Supreme Court Ronald J. Wilper
9/23/2008	REPL	CCTHIEBJ	Defendants' Reply To Plaintiffs' Opposition To Defendants' Memorandum Of Attorney Fees Ronald J. Wilper
9/24/2008	REQU	CCTHIEBJ	Respondents' Request For Additional Clerk's Record Ronald J. Wilper
10/3/2008	DCHH	DCJOHNSI	Hearing result for Motion for Attorney fees and Costs held on 10/03/2008 04:00 PM: District Court Hearing Held Court Reporter: patty terry Number of Transcript Pages for this hearing estimated:50 Ronald J. Wilper
10/10/2008	ORDR	DCJOHNSI	Order for Attorney Fees Ronald J. Wilper
	MISC	DCJOHNSI	Amended Judgment Ronald J. Wilper
	STAT	DCJOHNSI	STATUS CHANGED: closed Ronald J. Wilper

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NO. \_\_\_\_\_  
A.M. \_\_\_\_\_ P.M. 3:43

AUG 25 2006

J. DAVID NAVARRO, Clerk  
By C. Cruz  
DEPUTY

Eric S. Rossman, ISB #4573  
Erica S. Phillips, ISB #6009  
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737 N. 7<sup>th</sup> Street  
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Attorneys for Plaintiffs

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

H. RAY HARRISON and JULIE  
HARRISON, husband and wife, ,

Plaintiffs,

-vs-

CERTAIN UNDERWRITERS AT LLOYD'S,  
LONDON; NAS INSURANCE SERVICES  
INC., a California corporation,

Defendants.

CASE NO. **CV PI 0615087**

**COMPLAINT AND DEMAND FOR  
JURY TRIAL AND  
DECLARATORY JUDGMENT**

**Category: A-1**

**Filing Fee: \$88.00**

COME NOW, H. RAY HARRISON and JULIE HARRISON, the above-named  
Plaintiffs, and for cause of action against the Defendants, CERTAIN UNDERWRITERS AT  
LLOYD'S, LONDON, and NAS INSURANCE SERVICES, INC. hereby COMPLAIN AND  
ALLEGE as follows:

## **PARTIES**

1. At all times mentioned herein, Plaintiffs H. Ray Harrison and Julie Anderson were and now are a common law married couple which common law marriage was established prior to January 1, 1996, and residents of Ada County, Idaho. Such common law marriage was formalized on June 5, 2004.

2. Defendant, Certain Underwriters at Lloyd's, London (hereinafter "Lloyd's"), at all times herein mentioned have been, and presently are licensed by the Idaho Department of Insurance.

3. Defendant NAS Insurance Services, Inc. (hereinafter "NAS"), at all times herein mentioned has been, and presently is, a California corporation doing business in the State of Idaho, and an authorized Correspondent for Lloyd's.

4. In August of 2006, Dr. Jeffery Hartford executed an assignment of his causes of action against Lloyd's and NAS to Plaintiffs in this matter.

## **JURISDICTION AND VENUE**

5. The Court has jurisdiction in this matter pursuant to Idaho Code § 1-705.

6. Venue is proper, pursuant to Idaho Code § 5-404 because Plaintiffs' residence is in Ada County and the acts and omissions complained of occurred in Ada County.

## **GENERAL ALLEGATIONS**

7. On November 15, 2003, Plaintiff H. Ray Harrison ("Mr. Harrison") was admitted to Saint Alphonsus Regional Medical Center's ("SARMC") emergency room.

8. Mr. Harrison was seen in the emergency room by D. Lee Binnion, M.D.



9. Dr. Binnion spoke with Dr. Jeffrey Hartford ("Dr. Hartford") who was the admitting physician for Mountain States Medical, employer of Mr. Harrison's regular physician.

10. Dr. Hartford admitted Mr. Harrison to SARMC.

11. Dr. Hartford assumed responsibility for Mr. Harrison's care as the attending physician.

12. Over the next week, Mr. Harrison's condition steadily deteriorated as he became less and less responsive to outside stimuli. On November 22, 2003, Dr. Hartford requested a neurological consult by Dr. Martha Cline. Dr. Cline diagnosed Mr. Harrison with Central Pontine Myelinolysis (CPM) occurring in the setting of severe hyponatremia with subsequent correction.

13. That same day, Dr. Michael Minas assumed care from Dr. Hartford as Mr. Harrison's attending physician and, upon request of Mr. Harrison's family, transferred Mr. Harrison to the SARMC intensive care unit.

14. Mr. Harrison suffers from severe and permanent neurological injury which requires care and assistance in all aspects of daily living.

15. At the time of Dr. Hartford's treatment of Mr. Harrison, Dr. Hartford was the owner of a Physicians and Surgeons Professional Liability Policy issued as Policy Number 200056 (hereinafter "the policy") by Lloyd's. A true and correct copy of this policy is attached hereto as Exhibit "A."

16. The Correspondent on the policy was NAS, and all claims were to be submitted to NAS.

17. The policy was a "claims-made" policy under which coverage was limited to events occurring on or after the retroactive date of the policy and first reported by Dr. Hartford to

Lloyd's through NAS prior to termination of the policy or within any policy period or additional reporting period applicable to Dr. Hartford.

18. The policy was effective June 1, 2003, to June 1, 2004.

19. The policy limits were \$1,000,000.00 per claim.

20. The policy entered into between Dr. Hartford and Lloyd's contains no exclusions for the type of care rendered to Mr. Harrison by Dr. Hartford.

21. Prior to June 1, 2004, NAS received notice of Dr. Hartford's claim for coverage arising from his treatment of Mr. Harrison.

22. On March 2, 2004, Mr. Harrison filed a Medical Malpractice Pre-Litigation Screening Panel application, naming Dr. Hartford as a defendant.

23. The Pre-lit complaint alleged medical negligence and breach of duty by Dr. Hartford in his treatment of Mr. Harrison.

24. On April 28, 2004, Plaintiffs filed suit in the Fourth Judicial District of the State of Idaho.

25. In this Complaint, Plaintiffs alleged that Dr. Hartford was negligent in his treatment of Mr. Harrison and committed negligent and/or intentional infliction of emotional distress.

26. A panel of the Idaho State Board of Medicine held a hearing on the Pre-litigation complaint on July 7, 2004, and issued its report and recommendation on July 20, 2004.

27. The panel concluded that Dr. Hartford had been negligent in his treatment of Mr. Harrison and recommended settlement of Mr. Harrison's claims prior to trial.

28. On August 27, 2004, Lloyd's notified Dr. Hartford that it was voiding the policy between itself and Dr. Hartford.

29. The stated basis for voiding the policy was a violation of provisions of the Second Amended Stipulation and Order entered into by the Idaho State Board of Medicine and Dr. Hartford.

30. Neither Lloyd's nor NAS refunded any premiums paid by Dr. Hartford for the policy.

31. On or about August 16, 2006, Plaintiffs reached a settlement with Dr. Hartford for their claims against him in the sum of \$1,000,000.00.

32. This settlement included an assignment of any and all of Dr. Hartford's claims against Lloyd's and/or NAS resulting from the denial of coverage for claims asserted by Plaintiffs.

### **COUNT ONE**

#### ***(Breach of Contract)***

33. Plaintiffs hereby reallege the allegations contained in Paragraphs 1 through 32 set forth above, and incorporate the same herein by reference.

34. The insurance policy issued by Lloyd's to Dr. Hartford constitutes a valid, binding, and enforceable contract of insurance between Lloyd's and Dr. Hartford.

35. Dr. Hartford paid all premiums due, submitted all proofs of loss required, and performed all other obligations and conditions required under the contract of insurance.

36. Lloyd's refusal to pay the claims submitted by Dr. Hartford according to the terms of the policy constitutes a substantial and material breach of the contract.

37. As a direct and proximate result of Lloyd's breach of contract, Dr. Hartford has suffered damages in an amount exceeding \$1,000,000.00 to be proven with certainty at trial.

38. Plaintiffs are entitled to recover their attorney fees and costs incurred in prosecuting this action pursuant to Idaho Code §§ 41-1839, 12-120(3) and 12-121.

## **COUNT TWO**

### ***(Breach of the Implied Covenant of Good Faith and Fair Dealing)***

39. Plaintiffs hereby reallege the allegations contained in Paragraphs 1 through 38 set forth above, and incorporate the same herein by reference.

40. The insurance contract between Dr. Hartford and Lloyd's includes an implied covenant of good faith and fair dealing by both parties.

41. Lloyd's refusal to pay the properly submitted claims by Dr. Hartford substantially nullified a benefit to which Dr. Hartford was entitled under the terms of the contract, and thereby breached the implied covenant of good faith and fair dealing.

42. As a direct and proximate result of Lloyd's breach of the implied covenant of good faith and fair dealing, Dr. Hartford has suffered damages in an amount exceeding \$1,000,000.00 to be proven with certainty at trial.

43. Plaintiffs are entitled to recover their attorney fees and costs incurred in prosecuting this action pursuant to Idaho Code §§ 41-1839, 12-120(3) and 12-121.

### **COUNT THREE**

#### ***(Tort of Bad Faith)***

44. Plaintiffs hereby reallege the allegations contained in Paragraphs 1 through 43 set forth above, and incorporate the same herein by reference.

45. In handling Dr. Hartford's claim, Lloyd's has acted in tortious bad faith by negligently, intentionally, and unreasonably denying payment on the claim and, in the process, has harmed Dr. Hartford in such a way not fully compensable at contract.

46. As a direct and proximate result of the bad faith handling of Dr. Hartford's claim, Dr. Hartford has suffered damages in an amount exceeding \$1,000,000.00 to be proven with certainty at trial.

47. Plaintiffs are entitled to recover their attorney fees and costs incurred in prosecuting this action pursuant to Idaho Code §§ 41-1839, 12-120(3) and 12-121.

48. Lloyd's actions as alleged herein constitute intentional, reckless, willful acts in gross deviation of reasonable standard of conduct.

49. Plaintiffs hereby reserve this paragraph for a claim of punitive damages pursuant to Idaho Code § 6-1604.

### **COUNT FOUR**

#### ***(Request for Declaratory Relief)***

50. Plaintiffs hereby reallege the allegations contained in Paragraphs 1 through 49 set forth above, and incorporate the same herein by reference.

51. An actual, justiciable controversy exists between Dr. Hartford and Lloyd's as a consequence of Lloyd's refusal to pay Dr. Hartford's claims under the terms of the insurance policy. A declaration by this court of the parties' respective rights, duties and obligations regarding the litigation will resolve the controversy.

52. Neither Lloyd's nor Dr. Hartford has sought any previous adjudication of their respective rights under the insurance policy regarding the litigation.

53. There is no provision in the express language of the insurance policy that excludes Dr. Hartford's claims for coverage for the type of medical treatment provided to Mr. Harrison.

54. Lloyd's attempt to void the policy has failed by reason of its failure to timely refund premiums paid by Dr. Hartford.

55. As such, Lloyd's refusal to accept the claim is in conflict with the terms of the insurance policy and established law and Plaintiffs request a declaration from this Court that Lloyd's is obligated to indemnify Dr. Hartford and pay any and all sums owed by Dr. Hartford, by reason of settlement or judgment, to Plaintiffs, resulting from the negligence of Dr. Hartford up to the limits of coverage of the Physicians and Surgeons Professional Liability Policy.

56. Plaintiffs are entitled to recover their attorney fees and costs incurred in prosecuting this action pursuant to Idaho Code §§ 41-1839, 12-120(3) and 12-121.

57. Plaintiffs respectfully request that this court order a speedy hearing upon Plaintiffs' action and advance the action upon the calendar as provided by Idaho Rule of Civil Procedure 57.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs demand judgment and relief as follows:

1. For a declaratory judgment finding that Dr. Hartford is entitled to payment of his claims under the terms of the insurance policy issued by Certain Underwriters at Lloyd's, London;
2. For an award of money damages against Certain Underwriters at Lloyd's, London representing a full and fair amount of compensation for all special, general and consequential losses suffered by Dr. Hartford in an amount to be determined at trial;
3. For Plaintiffs' reasonable attorney fees and costs of suit;
4. For prejudgment interest under each of the losses suffered by Dr. Hartford as provided in Idaho Code § 28-22-104; and
5. For such other and further relief as the Court deems just and proper.

### **DEMAND FOR JURY TRIAL**

Plaintiffs demand a trial by jury composed of no less than twelve persons on all issues so triable.

DATED this 24<sup>th</sup> day of August, 2006.

ROSSMAN LAW GROUP, PLLC

By: \_\_\_\_\_



Eric S. Rossman  
Attorneys for Plaintiffs

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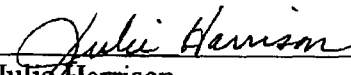
**VERIFICATION**

STATE OF IDAHO            )  
                                      ) ss.  
County of Ada             )

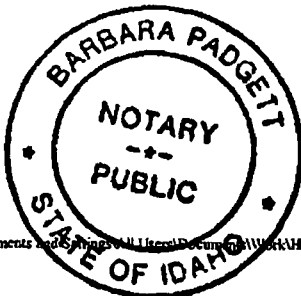
JULIE HARRISON, being first duly sworn, deposes and says:

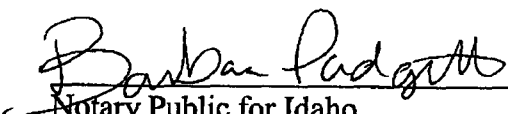
That I am one of the Plaintiffs in this matter, that I have read the foregoing Complaint, know the contents thereof, and believe the facts therein stated to be true and correct to the best of my knowledge and belief.

DATED this 22<sup>nd</sup> day of August, 2006.

  
\_\_\_\_\_  
Julie Harrison

SUBSCRIBED AND SWORN TO before me this 22 day of August 2006.



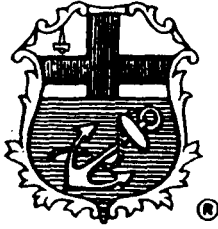
  
\_\_\_\_\_  
Notary Public for Idaho  
My Commission Expires: 12/16/08

C:\Documents and Settings\HLL\Local Documents\Work\HM\Harrison, Raylv. Lloyds of London\Pleadings\COMPLAINT.doc

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# EXHIBIT “A”



# Lloyd's, London

**This Insurance** is effected with certain Underwriters at Lloyd's, London (not incorporated).

**This Certificate** is issued in accordance with the limited authorization granted to the Correspondent by certain Underwriters at Lloyd's, London whose names and the proportions underwritten by them can be ascertained from the office of said Correspondent (such Underwriters being hereinafter called "Underwriters") and in consideration of the premium specified herein, Underwriters do hereby bind themselves each for his own part, and not one for another, their heirs, executors and administrators.

**The Assured** is requested to read this certificate, and if not correct, return it immediately to the Correspondent for appropriate alteration.

In the event of a claim under this certificate, please notify the following Correspondent:

**NAS**  
**Insurance Services, inc.**  
16633 VENTURA BLVD • SUITE 500 • ENCINO, CA 91436

JH 3 00017

## CERTIFICATE PROVISIONS

1. **Signature Required.** This certificate shall not be valid unless signed by the Correspondent on the attached Declaration Page.
2. **Correspondent Not Insurer.** The Correspondent is not an Insurer hereunder and neither is nor shall be liable for any loss or claim whatsoever. The Insurers hereunder are those individual Underwriters at Lloyd's, London whose names can be ascertained as hereinbefore set forth.
3. **Cancellation.** If this certificate provides for cancellation and this certificate is cancelled after the inception date earned premium must be paid for the time the insurance has been in force.
4. **Service of Suit.** It is agreed that in the event of the failure of Underwriters to pay any amount claimed to be due hereunder, Underwriters, at the request of any person or entity insured hereunder, will submit to the jurisdiction of any court of competent jurisdiction within the United States. Nothing in this Clause constitutes or should be deemed to constitute a waiver of Underwriters' right to commence an action in any court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another court, as permitted by the laws of the United States or of any state, territory, or district in the United States. It is further agreed that service of process in such suit may be made upon the firm or person named on the attached Declaration Page and that in such suit instituted against any one of them upon this Policy, Underwriters will abide by the final decision of such court or of any appellate court in the event of an appeal.

The above-named party is authorized and directed to accept service on behalf of Underwriters in any such suit upon the request of any person or entity to enter a general appearance on behalf of Underwriters in the event such a suit shall be instituted.

Further, pursuant to the applicable statute of any state, territory or district of the United States, Underwriters shall designate the Superintendent, Commissioner or Director of Insurance or other officer specified for the purpose in the statute or any successor in office, as Underwriters' true and lawful attorney, upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of any person or entity insured hereunder or any beneficiary hereunder arising out of this Policy, and hereby designate the firm or person named on the attached Declaration Page as the party to whom such officer is authorized to mail such process.

5. **Assignment.** This certificate shall not be assigned either in whole or in part without the written consent of the Correspondent endorsed hereon.
6. **Attached Conditions Incorporated.** This certificate is made and accepted subject to all the provisions, conditions and warranties set forth herein, attached, or endorsed, all of which are to be considered as incorporated herein.
7. **Short Rate Cancellation.** If the attached provisions provide for cancellation, the table below will be used to calculate the short rate proportion of the premium when applicable under the terms of cancellation.

**Short Rate Cancellation Table For Term of One Year**

Days Insurance in Force	Per Cent of One Year Premium	Days Insurance in Force	Per Cent of One Year Premium	Days Insurance in Force	Per Cent of One Year Premium	Days Insurance in Force	Per Cent of One Year Premium
1	5%	66 - 69	29%	154 - 156	53%	256 - 260	77%
2	6	70 - 73	30	157 - 160	54	261 - 264	78
3 - 4	7	74 - 76	31	161 - 164	55	265 - 269	79
5 - 6	8	77 - 80	32	165 - 167	56	270 - 273 (9 mos.)	80
7 - 8	9	81 - 83	33	168 - 171	57	274 - 278	81
9 - 10	10	84 - 87	34	172 - 175	58	279 - 282	82
11 - 12	11	88 - 91 (3 mos.)	35	176 - 178	59	283 - 287	83
13 - 14	12	92 - 94	36	179 - 182 (6 mos.)	60	288 - 291	84
15 - 16	13	95 - 98	37	183 - 187	61	292 - 296	85
17 - 18	14	99 - 102	38	188 - 191	62	297 - 301	86
19 - 20	15	103 - 105	39	192 - 196	63	302 - 305 (10 mos.)	87
21 - 22	16	106 - 109	40	197 - 200	64	306 - 310	88
23 - 25	17	110 - 113	41	201 - 205	65	311 - 314	89
26 - 29	18	114 - 116	42	206 - 209	66	315 - 319	90
30 - 32 (1 mo.)	19	117 - 120	43	210 - 214 (7 mos.)	67	320 - 323	91
33 - 36	20	121 - 124 (4 mos.)	44	215 - 218	68	324 - 328	92
37 - 40	21	125 - 127	45	219 - 223	69	329 - 332	93
41 - 43	22	128 - 131	46	224 - 228	70	333 - 337 (11 mos.)	94
44 - 47	23	132 - 135	47	229 - 232	71	338 - 342	95
48 - 51	24	136 - 138	48	233 - 237	72	343 - 346	96
52 - 54	25	139 - 142	49	238 - 241	73	347 - 351	97
55 - 58	26	143 - 146	50	242 - 246 (8 mos.)	74	352 - 355	98
59 - 62 (2 mos.)	27	147 - 149	51	247 - 250	75	356 - 360	99
63 - 65	28	150 - 153 (5 mos.)	52	251 - 255	76	361 - 365 (12 mos.)	100

Rules applicable to insurance with terms less than or more than one year:

- A. If insurance has been in force for one year or less, apply the short rate table for annual insurance to the full annual premium determined as for insurance written for a term of one year.
- B. If insurance has been in force for more than one year:
  1. Determine full annual premium as for insurance written for a term of one year.
  2. Deduct such premium from the full insurance premium, and on the remainder calculate the pro rata earned premium on the basis of the ratio of the length of time beyond one year the insurance has been in force to the length of time beyond one year for which the policy was originally written.
  3. Add premium produced in accordance with items (1) and (2) to obtain earned premium during full period insurance has been in force.



PO Box 58689 - Birmingham, AL 35259-9689  
(205) 870-7790 Phone - (205) 879-3739 Fax

## INDICATION

ATTN: Karyn Richcreek  
AGENCY: Marsh Affinity Group Service-Boise

FAX: (208) 338-6485  
INDICATION EXP DATE: 5 Days

Dear Karyn,

**WE ARE PLEASED TO OFFER THE FOLLOWING INDICATION; PLEASE NOTE THAT THIS INDICATION IS BASED ON COVERAGES LISTED BELOW. AS THE REPRESENTATIVE OF THE INSURED, IT IS INCUMBENT UPON YOU TO REVIEW THE TERMS OF THIS INDICATION CAREFULLY, AS THE COVERAGES, TERMS AND CONDITIONS OF THE INDICATION MAY BE DIFFERENT THAN THOSE REQUESTED. CRC INSURANCE SERVICES, INC., DISCLAIMS ANY RESPONSIBILITY FOR YOUR FAILURE TO RECONCILE THE ORIGINAL SUBMISSION WITH COVERAGES LISTED WITHIN THIS INDICATION. THIS COVERAGE MAY NOT BE BOUND WITHOUT A FULLY EXECUTED BROKERAGE AGREEMENT.**

The terms of our quote are as follows:

Insured Name: Jeffrey F Hartford, MD

Carrier: Lloyds of London

Coverage: Professional Liability

Term: 6/1/2004 to 6/1/2005

Retroactive: 6/1/2003

Limit: \$1,000,000 Per Claim  
\$3,000,000 Annual Aggregate

Deductible: \$7,500 Per Claim

Terms & Conditions: Premium is due upon receipt of invoice.  
AGENT IS RESPONSIBLE FOR FILING ALL SURPLUS LINES TAXES, FILINGS AND FEES.  
Written request to bind is required.  
This is a claims-made policy, and all claims reported must occur after the effective date of the policy. This policy specifically excludes any pending claims or any known to the insured prior to the inception date of this policy.  
  
Defense in addition to the limits of the liability is available for an additional premium of \$7,768  
Extended Reporting Options: One Year - 200% of Annual Premium  
Five Years - 500% of Annual Premium

Subject to: The Surplus Line Form being completed within 15 days of binding.

NOTE: If insured is located outside your resident state, we must receive a copy of your non-resident license prior to binding.



Item I. Service of Suit:

Mendes & Mount, LLP  
725 South Figueroa Street, 19<sup>th</sup> Floor  
Los Angeles, CA 90017-5419

Dated June 30, 2003

NAS INSURANCE SERVICES, INC.

By:



Correspondent

**ENDORSEMENT  
SURGICAL AND SURGICAL ASSISTING EXCLUSION**

Neither defense nor indemnity insurance coverage is available under this policy for claims, civil lawsuits, arbitrations, legal proceedings, incidents, accidents or events resulting from the performance of surgery or assisting at surgery by the insured, unless specifically endorsed onto the policy by Underwriters.

For the purpose of this Exclusion, surgery is defined as cutting procedures (except simple repair of lacerations, and excision of lesions limited to the skin and immediate subcutaneous tissue), the practice of anesthesiology, and/or orthopedics.

This Exclusion shall apply only to surgery or surgical assisting upon patients by the Insured on or after the effective date of this Endorsement.

Policy No: 200056

Name: Jeffrey F. Hartford, M.D.

Effective: June 1, 2003

Policy Effective Date: June 1, 2003      Expiration: June 1, 2004

Endorsement No. E03 (02)

**ENDORSEMENT**  
**EMERGENCY MEDICINE/EMERGENCY ROOM PRACTICE EXCLUSION**

Neither defense nor indemnity insurance coverage is available under this policy for claims, civil lawsuits, arbitrations, legal proceedings, incidents, accidents or events resulting from the practice of emergency medicine by the Insured as a contractor to or employed physician at any outpatient facility or hospital designated as or offering emergency medical services.

This Exclusion shall apply only to emergency medical services delivered to patients by the Insured on or after the effective date of this Endorsement.

Policy No: 200056

Name: Jeffrey F. Hartford, M.D.

Effective: June 1, 2003

Policy Effective Date: June 1, 2003      Expiration: June 1, 2004

Endorsement No. E05 (02)



**ENDORSEMENT  
DIAGNOSTIC RADIOLOGY EXCLUSION**

Neither defense nor indemnity insurance coverage is available under this policy for claims, civil lawsuits, arbitrations, legal proceedings, incidents, accidents or events resulting from the performance of myelography, angiography, intravenous pyelogram, or any other diagnostic radiologic procedure by the Insured.

This Exclusion shall apply only to diagnostic radiologic procedures delivered to patients by the Insured on or after the effective date of this Endorsement.

Policy No: 200056

Name: Jeffrey F. Hartford, M.D.

Effective: June 1, 2003

Policy Effective Date: June 1, 2003    Expiration: June 1, 2004

Endorsement No. E07 (02)

## ENDORSEMENT PROCEDURE EXCLUSION

Neither defense nor indemnity insurance coverage is available under this policy for claims, civil lawsuits, arbitrations, legal proceedings, incidents, accidents, or events resulting from the performance of the following procedures by the Insured.

The Insured's medical professional liability policy is changed to add the following under

### Exclusions:

#### 1. No Defense or Payment of Damages:

S. Any liability sought or imposed for damage or injury resulting from:

- 16) Prostetial Services.
- 17) Claims arising out of services provided for or on clinical trials.
- 18) Redux (aka Defenduramine)
- 19) The use, administration, or prescription of amphetamines.
- 20) The drug combination commonly called "phca-fen" (Jonamin aka Phenentermine and Pondimin, aka Penfleramine, Fluramine).
- 21) The use, administration, or prescription of Human Chorionic Gonadotropin (HCG) in the treatment of obesity or weight control.
- 22) Non prescription Ephedrine, any non prescription containing Ephedrine, Pseudo-Ephedrine or Ephedrine Alkaloids, or Ephedrine distributed under any other name or in any other form including but not limited to Ma Huang, Ephedra, Ephedra Sinensis, Ephedra Intermedia, Ephedra Equisetina, Epitonic, Country Mallow, Mormon Tea, Brigham Tea, Squaw Tea, Desert Tea, or Teanastate Tea.

Failure to comply with these restrictions will render this policy null and void.

I understand that this Endorsement limits my medical professional liability coverage, and that my coverage is contingent on my compliance with the terms of this Endorsement.

 M.D.  
Signature

6.6.03  
Date

Policy No: 200056

Name: Jeffrey F. Hartford, MD

Effective: June 1, 2003

Policy Effective Date: June 1, 2003 Expiration: June 1, 2004

Endorsement No. E12 (02)

809-J 200 J 108-1

FROM: 11/21/03 02-02-JUN

JH 11

00025

RECEIVED TIME JUN. 17. 2:32PM

**ENDORSEMENT  
EXCLUSION OF COVERAGE FOR ADDITIONAL INSURED**

Underwriters agree with the Insured that coverage under this policy for the following individual employed by the Insured are excluded from coverage under this policy as an Additional Insured as outlined in the Definitions of this policy.

- 1. Eric Manus, P.A.**

Policy No: 200056

Name: Jeffrey F. Hartford, M.D.

Effective: June 1, 2003

Policy Effective Date: June 1, 2003      Expiration: June 1, 2004

Endorsement No. E28 (02)

## ENDORSEMENT

### U.S.A.

#### NUCLEAR INCIDENT EXCLUSION CLAUSE-LIABILITY-DIRECT (BROAD)

*For attachment to insurances of the following classifications in the U.S.A., its Territories and Possessions, Puerto Rico and Canal Zone:*

*Owners, Landlords and Tenants Liability, Contractual Liability, Elevator Liability, Owners or Contractors (including railroad) Protective Liability, Manufacturers and Contractors Liability, Product Liability, Professional and Malpractice Liability, Storekeepers Liability, Garage Liability, Automobile Liability (including Massachusetts Motor Vehicle or Garage Liability),*

*not being insurances or the classifications to which the Nuclear Incident Exclusion Clause-Liability-Direct (Limited) applies.*

This policy\* does not apply:

- I. Under any Liability Coverage, to injury, sickness, disease, death or destruction
  - (a) with respect to which an insured under the policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; or
  - (b) resulting from the hazardous properties of nuclear material and with respect to which (1) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (2) the insured is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.
- II. Under any Medical Payments Coverage, or under any Supplementary Payments Provision relating to immediate medical or surgical relief, to expenses incurred with respect to bodily injury, sickness, disease or death resulting from the hazardous properties of nuclear material and arising out of the operation of a nuclear facility by any person or organization.
- III. Under any Liability Coverage, to injury, sickness, disease, death or destruction resulting from the hazardous properties of nuclear material, if
  - (a) the nuclear material (1) is at any nuclear facility owned by, or operated by or on behalf of, an insured or (2) has been discharged or dispersed therefrom;
  - (b) the nuclear material is contained in spent fuel or waste at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of an insured; or
  - (c) the injury, sickness, disease, death or destruction arises out of the furnishing by an insured of services, materials, parts or equipment in connection with the planning, construction maintenance, operation or use of any nuclear facility, but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion (c) applies only to injury to or destruction of property at such nuclear facility.

00027

JH 13

## WAR AND CIVIL WAR EXCLUSION ENDORSEMENT

Notwithstanding any provision to the contrary within this insurance or any endorsement thereto it is agreed that this insurance excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any of the following regardless of any other cause or event contributing concurrently or in any other sequence to the loss;

1. war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power; or

2. any act of terrorism.

For the purpose of this endorsement an act of terrorism means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear.

This endorsement also excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to 1 and/or 2 above.

If the Underwriters allege that by reason of this exclusion, any loss, damage, cost or expense is not covered by this insurance the burden of proving the contrary shall be upon the Assured. In the event any portion of this endorsement is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

08/10/01 NMA2918

Policy No: 200056

Name: Jeffrey F. Hartford, M.D.

Effective: June 1, 2003

Policy Effective Date: June 1, 2003      Expiration: June 1, 2004

Endorsement No. E38 (02)

00028

JH 14

**ENDORSEMENT  
LOCUM TENENS EXCLUSION**

Neither defense nor indemnity insurance coverage is available under this policy for claims, civil lawsuits, arbitrations, legal proceedings, incidents, accidents, or events resulting from the medical services rendered as locum tenens by the Insured.

The Insured's medical professional liability policy is changed to add the following under

Exclusions.

1. No Defense or Payment of Damages.

W. Any liability sought or imposed for any medical or professional services rendered by the named insured while acting as locum tenens.

For the purposes of this Endorsement, locum tenens is defined as follows: A physician who temporarily carries on the practice of an absent doctor, providing the same services as the physician.

Failure to comply with these restrictions will render this policy null and void.

Policy No: 200056

Name: Jeffrey F. Hartford, M.D.

Effective: June 1, 2003

Policy Effective Date: June 1, 2003      Expiration: June 1, 2004

Endorsement No. E40 (02)

**ENDORSEMENT  
MEDICAL DIRECTOR OF NURSING HOME EXCLUSION**

There is no coverage under this policy for claims, civil lawsuits, arbitrations, legal proceedings, incidents, accidents or events resulting from the actions of the Insured when acting as a Medical Director of a Nursing Home or Adult Day Care Facility. For the purposes of this endorsement, a nursing home is defined as an independent living facility, assisted living facility, intermediate care facility, skilled nursing facility, Alzheimer's care facility, Continuing Care Retirement community or any other like residential facility.

Policy No: 200056

Name: Jeffrey F. Hartford, M.D.

Effective: June 1, 2003

Policy Effective Date: June 1, 2003      Expiration: June 1, 2004

Endorsement No. E48 (02)

## SEXUAL ABUSE EXCLUSION

In consideration of the premium charged, it is agreed that the policy MPL 2002 page 15 of 16 is hereby amended as follows:

Exclusions, Section (2) Defense Only – No Payment of Damages item (B.) is removed in its entirety.

It is further agreed that the following exclusion is added to the policy:

X. No coverage shall apply under this policy to any claims involving the use of excessive influence or power on any patient, or the actual or alleged inappropriate physical contact or contact that is deemed by or alleged by the plaintiff to be sexual or in any way unwelcomed.

Policy No: 200056

Name: Jeffrey F. Hartford, M.D.

Effective: June 1, 2003

Policy Effective Date: June 1, 2003      Expiration: June 1, 2004

Endorsement No. E52 (03)

JH 17

00031



**ENDORSEMENT  
STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**

In consideration of the premium charged the attached Stipulated Settlement and Disciplinary Order, dated January 29, 1999, is hereby made part of the policy. Any failure to adhere to the terms and conditions of the Order will be in violation of the policy and will render the coverage void.

Policy No: 200056

Name: Jeffrey F. Hartford, M.D.

Effective: June 1, 2003

Policy Effective Date: June 1, 2003      Expiration: June 1, 2004

Endorsement No. E55 (03)

JH 18

**00032**

Jean R. Uranga  
URANGA & URANGA  
714 North 5th Street  
P.O. Box 1678  
Boise, Idaho 83701  
Telephone: (208) 342-8931  
Facsimile: (208) 384-5686

Attorneys for the Board

IDAHO BOARD OF MEDICINE  
I certify that this document is a true  
and correct copy of the original on  
file in this office.

*Mary Louise Associates, Inc.*  
Name/Title  
5/19/03  
Date

BEFORE THE BOARD OF PROFESSIONAL DISCIPLINE OF  
THE IDAHO STATE BOARD OF MEDICINE

In the Matter of:

JEFFREY F. HARTFORD, M.D.,  
License No. M-5269,

Respondent.

Case No. 95-033

SECOND AMENDED  
STIPULATION AND ORDER

COMES NOW the Board of Professional Discipline of the Idaho State Board of Medicine, hereinafter referred to as the Board, and Jeffrey F. Hartford, M.D., hereinafter referred to as Respondent, and stipulate and agree as follows:

I

Respondent is the holder of an Idaho license to practice medicine and surgery, License No. M-5269, issued by the Idaho State Board of Medicine on September 2, 1987. Said license is subject to the provisions of Title 54, Chapter 18, Idaho Code, commonly known as the Medical Practice Act.

II

On December 18, 1995, Respondent entered into a Stipulation and Order with the Board to address the Board's concerns regarding personal use of alcohol and controlled substances by Respondent.

The Stipulation and Order established certain terms and conditions and Respondent violated those conditions. Based upon those violations, an Order of Temporary Suspension was entered by the Board on September 16, 1996.

On March 21, 1997, Respondent entered into an Amended Stipulation and Order with the Board to address the additional concerns regarding personal use of alcohol and controlled substances by Respondent. The Stipulation and Order also established certain terms and conditions and Respondent again violated those conditions. Based upon those further violations, another Order of Temporary Suspension was issued by the Board on September 25, 1998. A disciplinary Complaint was also filed October 19, 1998.

### III

The acts and practices of Respondent, as alleged in Paragraph II above, constitute violations of the Medical Practice Act in that Respondent has practiced medicine in violation of a voluntary restriction or term of probation pursuant to this Chapter, in violation of Idaho Code §54-1814(19).

### IV

The Board believes it has sufficient evidence to support disciplinary action based upon these allegations, but rather than pursuing a formal investigation and hearing, the parties are voluntarily entering into this Second Amended Stipulation and Order for the purpose of informally responding to the concerns of the Board and for the purpose of providing an acceptable procedure for dealing with the alleged problems.

### V

Respondent knowingly and voluntarily waives any right to a

formal hearing, to present evidence, to cross-examine witnesses, to reconsideration and appeal and to other rights accorded him pursuant to the Administrative Procedure Act and the Medical Practice Act which he might otherwise possess with respect to this Second Amended Stipulation.

## VI

In order to respond to these allegations, Respondent hereby stipulates and agrees that:

- (a) Respondent's license to practice medicine and surgery in the State of Idaho shall remain suspended for six (6) months from his discharge from Springbrook Northwest, which occurred on November 13, 1998.
- (b) Respondent shall abstain completely from the personal use or possession of drugs, except those prescribed, administered, or dispensed to him by another so authorized by law who has full knowledge of Respondent's history of chemical dependency.
- (c) Respondent shall abstain completely from the use of alcohol.
- (d) Respondent shall submit to random urine screenings for drugs on a weekly basis or as otherwise directed by the IMA Peer Assistance Program. The IMA Peer Assistance Program shall immediately inform the Board of any positive screening results.
- (e) The Board retains the right to require, and Respondent agrees to submit, blood or urine specimens for analysis upon request and without prior notice.
- (f) Respondent shall execute a contract with the IMA Peer

Assistance Program and shall comply fully with the terms and conditions of that contract and shall authorize the IMA to provide the Board with regular status reports and all records of the program.

- (g) Respondent shall have a monitoring physician, approved by the Board, who shall monitor him and provide the Board with reports on the doctor's progress and status. Respondent is to ensure that said reports are forwarded to the Board on a quarterly basis. In the event that the designated monitoring physician becomes unable or unwilling to serve in this capacity, Respondent must immediately so notify the Board in writing, and make arrangements acceptable to the Board for another physician to monitor his progress and status as soon as practicable.
- (h) Respondent shall provide all employers and the Chief of Staff at each hospital where he has, applies for, or obtains privileges, with a copy of this Second Amended Stipulation and Order.
- (i) Respondent shall obey all federal, state and local laws, and all rules governing the practice of medicine in Idaho.
- (j) In the event that Respondent should leave Idaho for three (3) continuous months, or reside or practice outside the State, Respondent must notify the Board in writing of the dates of departure and return. Periods of time spent outside Idaho will not apply to the reduction of this period under the Second Amended Stipulation and Order.

## VII

The above described terms, limitations and conditions may be amended or terminated in writing at any time upon the agreement of both parties. However, this Second Amended Stipulation and Order shall remain in force for a minimum of five (5) years prior to any request for termination of this Second Amended Stipulation and Order.

## VIII

If, in the discretion of the Idaho State Board of Medicine; Respondent appears to have violated or breached any terms or conditions of this Second Amended Stipulation and Order, the Idaho State Board of Medicine reserves the right to institute formal disciplinary proceedings for any and all possible violations or breaches, including, but not limited to, alleged violations of the laws of Idaho occurring before the effective date of this Second Amended Stipulation and Order. If Respondent tests positive on any of the drug screenings or if the Board receives any evidence of relapse, Respondent's license shall be summarily suspended pending any further proceedings and shall be permanently revoked if the charges are proven.

## IX

Any action initiated by the Board based on alleged violations of this Second Amended Stipulation and Order shall comply with the Administrative Procedure Act, Title 67, Chapter 52, Idaho Code, the Medical Practice Act and the Rules of Practice and Procedure of the Board.

## X

Respondent agrees to execute the Release, attached hereto as

Exhibit A, releasing the Idaho State Board of Medicine, the Idaho State Board of Discipline, their members, employees, agents, officers, representatives, attorneys, consultants and witnesses, jointly and severally, from any and all liability arising from their participation or involvement in the Board's investigation of Respondent and in the prosecution of this disciplinary proceeding.

XI

This Second Amended Stipulation and Order shall be considered a public record as that term is used in the Idaho Code, and will be reported to the National Practitioner Data Bank and the Federation of State Medical Boards and to any licensing agencies who request information. This Second Amended Stipulation and Order shall become effective upon the last date of signature below.

XII

Respondent further agrees to execute the Release, attached hereto as Exhibit B, authorizing any person or entity having information relevant to Respondent's compliance with the provisions of this Second Amended Stipulation and Order to release such information to the Board.

XIII

The parties acknowledge that Respondent has been represented by attorneys of his choice and the terms and legal significance of this Second Amended Stipulation and Order and the effect which it has was fully explained. Respondent acknowledges that he fully understands this Second Amended Stipulation and Order and its legal effect and that he is signing the same freely and voluntarily, and that neither party has any reason to believe that the other did not understand fully the terms and the effects of this Second Amended

Stipulation and Order or that he did not freely and voluntarily execute this Second Amended Stipulation and Order.

DATED This 27 day of January, 1999.

BOARD OF PROFESSIONAL DISCIPLINE

Jane Bennett Munro M.D.  
JANE BENNETT-MUNRO, M.D.  
Chair

DATED This 28 day of 1999 Jan. 1999.

Jeffrey F. Hartford  
JEFFREY F. HARTFORD, M.D.

ORDER

Pursuant to Idaho Code §§54-1806(A)(6)(e) and 54-1806(A)(10), the Board hereby accepts the terms and conditions of the foregoing Second Amended Stipulation and it is hereby ordered that Respondent comply with said terms and conditions. Based upon the foregoing, further formal proceedings will be waived.

DATED This 29 day of January, 1999.

BOARD OF PROFESSIONAL DISCIPLINE

Jane Bennett Munro M.D.  
JANE BENNETT-MUNRO, M.D.  
Chair





# NAS

## Insurance Services, inc.

16633 VENTURA BLVD • SUITE 500 • ENCINO, CA 91436  
PHONE 818/382-2030 • FAX 818/382-2040  
E-MAIL—general@nasinsurance.com WEB SITE—http://www.nasinsurance.com  
LIC. #0677191

### PHYSICIANS AND SURGEONS PROFESSIONAL LIABILITY POLICY (Other than Standard)

#### NOTICE

#### THIS IS A "CLAIMS-MADE" POLICY

Coverage under this policy is provided on a "claims-made" basis, that is, insurance is limited to matters described in this policy which:

1. Arise out of events described in the policy occurring on or after the retroactive date in the applicable policy Declarations issued to the Insured, and
2. Are first reported by the Insured to Underwriters either prior to the termination of this policy or within any policy period or additional reporting period applicable to the Insured.

Please review this policy carefully and discuss the coverage with an attorney, broker, insurance advisor or risk management consultant.

#### NOTICE

IN THE EVENT THAT YOU ARE INVOLVED IN AN ACCIDENT OR INCIDENT  
WHICH MAY GIVE RISE TO A CLAIM, LAWSUIT OR LEGAL OR  
ADMINISTRATIVE PROCEEDING, IMMEDIATELY CONTACT THE CLAIMS  
DEPARTMENT AT NAS INSURANCE SERVICES, INC. AT (818) 382-2030.

**PHYSICIANS AND SURGEONS PROFESSIONAL LIABILITY POLICY**  
**(for other than Standard)**

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## NOTICE

Except as may otherwise be provided herein, the coverage of this policy is limited generally to liability for only those claims that are first made against the **Insured** while the policy is in force. Please review the policy carefully and discuss the coverage with an attorney, broker, insurance advisor or risk management consultant.

## CLAIMS MADE AND REPORTED INSURANCE POLICY

Certain Underwriters at Lloyds of London provide the insurance described in this insurance policy. The term "**Insured**" is used to describe the **Insured** person or entity, who is either named in the policy **Declarations** or **Endorsement** or is an individual described specifically in this policy. Terms, which appear in boldface, are defined in the "Definitions" section, page five (5).

This policy provides professional liability coverage to individual physicians and certain employed additional **Non-Physician Healthcare Professionals** for claims involving direct patient treatment when the claim arises out of an occurrence which happened during the policy period, and the claim is initially asserted against the **Insured** during the policy period, and the claim is first reported to Underwriters in writing during the policy period. Coverage is available only for claims or suits arising out of events, which occur after the "retroactive date" specified in a policy **Declarations** or an **Endorsement**, which applies to this policy. The policy will be in effect from 12:01 AM on the effective date until 12:01 AM on the day the policy expires or is terminated by the **Insured** or Underwriters.

This policy may describe coverage which is not included in the **Insured's** insurance. The policy **Declarations** or **Endorsements** applicable to this policy will specify the effective date and identify the specific coverage included in the **Insured's** policy. The limits of liability are specified either in the policy **Declarations** or in an **Endorsement**.

Coverage for any claim is contingent upon compliance with all other sections of this policy.

## PERSONS INSURED

Each of the following is an **Insured** under this policy to the extent set forth below, and share limits with the **Named Insured** physician on the policy:

1. A physician (the **Named Insured**);
2. If such physician practices his or her profession as the sole shareholder of a solo medical corporation, the solo medical corporation;
3. Any approved **Non-Physician Healthcare Professional** employed by such physician, but only while acting within the scope of his or her duties for such physician;
4. Any approved locum tenens, but only while acting within the scope of his or her duties for such physician; and
5. Any other employee of such physician (other than a **Non-Physician Healthcare Professional** or locum tenens), but only while acting within the scope of his or her duties for such physician.

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## SCOPE OF COVERAGE

Underwriters will defend an **Insured** under this policy, and pay, on behalf of such **Insured**, all sums up to the limits of insurance stated on the **Declarations** or **Endorsement** that such **Insured** becomes legally obligated to pay as damages for injury which results from the rendering or failure to render direct patient treatment by:

1. **An Insured physician;**
2. **An approved Non-Physician Healthcare Professional** employed by an **Insured physician** who has been specifically identified by name in a **policy Declarations** or **Endorsement**, but only if the occurrence takes place while such **Non-Physician Healthcare Professional** is acting within the scope of his or her duties for the **physician**;
3. **An approved locum tenens** who has been specifically identified by name in a **policy Endorsement**, but only if the occurrence takes place while such **locum tenens** is acting within the scope of his or her duties for the **physician**; and
4. **Any other employee of such physician (other than a Non-Physician Healthcare Professional or locum tenens), but only while acting within the scope of employment for such physician.**

Underwriters' obligation to pay reasonable **Costs, Charges and Expenses** is not subject to the specified limits of liability. Underwriters' obligations to make any other payment on an **Insured's** behalf are subject to the specified limits of liability.

1. Underwriters' obligation to make any payment on an **Insured's** behalf is subject to the **Insured's** timely payment of the applicable deductible.
2. In such matters, Underwriters will also pay the costs and prejudgment interest imposed upon an **Insured** by law, post-judgment interest on a judgment against an **Insured** up to the time Underwriters makes payment, subject to the limits of liability, and premiums on appeal bonds, for bond values up to the Underwriters' limits of liability.

## DEFINITIONS

The following terms, whenever they are used in this policy, will be defined as follows:

1. **Application:**
  - A. The **Application** for this policy or any policy of which this policy is a renewal; and
  - B. Any materials submitted therewith.
  - C. These items shall be retained on file by Underwriters and shall be deemed attached hereto, as if physically attached hereto.
2. **Additional Insured:** Non-physician employees of the **Named Insured** who are not required to be licensed or certified to provide any services for which they are employed, but only with respect to healthcare services they perform within the authorized scope of their employment by the **Insured**.

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3. **Additional Named Insured:** Persons or entities that must be specifically identified by name in a policy Declaration or Endorsement in order to be covered under this policy. This category includes the Named Insured's solo professional corporation and persons practicing or licensed in any of the following categories:
- A. Acupuncturists
  - B. Psychologists;
  - C. Counselors;
  - D. Social Workers;
  - E. Nurses;
  - F. Nurse Practitioners;
  - G. Nurse Anesthetists;
  - H. Nurse Midwives;
  - I. Perfusionists;
  - J. Physicians Assistants;
  - K. Scrub Nurses;
  - L. Surgical Assistants;
  - M. Technicians or Therapists who are required to be licensed or certified;
  - N. Optometrists;
  - O. Opticians; or in any other position requiring licensure or certification
4. **Bodily Injury:** Physical injury, including death, physical sickness or physical disease.
5. **Claim:** Any written demand for damages or other relief against any of the Insureds by or on behalf of a patient or said patients legal heirs.
6. **Costs, Charges and Expenses:** Reasonable and necessary legal fees and expenses incurred in defense of any claim and cost of attachment or similar bonds, but shall not include:
- A. Salaries, wages, overhead or any expenses associated with the Named Insured's medical practice and/or solo professional corporation; or
  - B. Any amounts incurred in defense of any other claim for which any other insurer has a duty to defend.
7. **Declaration(s) or Endorsement(s):** A written document labeled as a Declaration or Endorsement issued by Underwriters to the Insured, applicable to this policy. The policy Declaration(s) or Endorsement(s) is a part of the policy.

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8. **Insured(s):** An Insured individual or entity under this policy who is identified as a "Named Insured" or an "Additional Named Insured" or an "Additional Insured" in a policy Declarations or Endorsement (s).
9. **Locum Tenens:** A medical physician who substitutes for another physician for a finite period of time. The Locum Tenens and the length of the replacement must be pre-approved by Underwriters. Locum Tenens coverage is only available for physicians.
10. **Loss:** Damages, including medical, economic and general compensatory damages; judgments (including pre-judgment and post-judgment interest awarded against an Insured on that part of any judgment paid or to be paid by Underwriters); settlements; Costs, Charges and Expenses, including attorney fees; but shall not include civil or criminal fines or penalties imposed by law or any other matters deemed uninsurable under the law pursuant to which this policy shall be construed.
11. **Named Insured:** The physician named in Item A of the Declarations.
12. **Non-Physician Healthcare Professionals:** Non-physician employees or contractors of the Named Insured who may be required to be licensed or certified to provide the services for which they are employed, but do not have an active medical license in the jurisdiction where they are employed.
13. **Physician:** A medical doctor or osteopath licensed to practice medicine in the applicable jurisdiction;
14. **Policy:** The written insurance agreement herein issued to an Insured upon Application and approval by Underwriters, and all policy Declarations and Endorsements, which apply to the Insured.
15. **Policy Period:** This policy does not apply to the Insured until a policy Declaration is issued by Underwriters, describing the specific period of time this policy shall be in effect. That period of time is a policy period, and commences at 12:01 A.M. on the effective date of the policy declaration. The policy period continues until 12:01 A.M. on the day the policy expires, is terminated, or is canceled, whichever occurs first. A policy period may be no longer than one "policy year", which is a twelve-month period.
16. **Professional Services:** Includes but is not limited to direct patient treatment and other medical, surgical, x-ray or nursing services, or treatment.
17. **Reporting Endorsement:** A written Endorsement issued to a physician, which permits the physician to report claims otherwise covered by certain coverages of this policy after the end of the policy period. The reporting Endorsement shows the physician as the Named Insured, the policy number, the retroactive date, the expiration or cancellation date, the applicable coverages, the premium and the reporting period covered by the Endorsement.
18. **Reporting Period:** The period of time specified in a reporting Endorsement during which claims arising from occurrences during the policy period that are covered by the applicable coverages can be reported to Underwriters. All dates shown are 12:01 a.m. at the address shown in Item A. of the Declarations.
19. **Retroactive Date:** The Retroactive Date is specified by Underwriters in a declaration or Endorsement issued to the Insured.
20. **Solo Professional Corporation:** The Named Insured's solo professional corporation wherein the professional corporation has a single shareholder, the Named Insured under this policy, who is engaged in the delivery of health care services.

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21. **Suit:** A civil proceeding in which damages because of **bodily injury** to which this insurance applies are alleged. **Suit** includes an arbitration proceeding alleging such damage to which the **Insured** must submit or does submit with the Underwriters' written consent.

### GENERAL CONDITIONS

These general conditions describe and limit the amount and availability of insurance provided under this policy, except in those instances where the policy itself makes different provisions applicable to specified coverage. In order for insurance described in this policy to apply to the **Insured**, said **Insured** must comply with each of the conditions described below. Underwriters will not be obligated to provide coverage if the **Insured** fails to comply with any condition.

#### 1. LIMITS OF LIABILITY

- A. The amount of insurance coverage available for indemnity payments for covered claims shall be as described in the **Declarations** or **Endorsement** (s).
- B. Limits of liability specified in a **Declarations** or **Endorsement** of this policy apply for all covered claims under this policy, and shall not be multiplied or expanded regardless of the number of **Insureds** or persons entitled to insurance coverage under this policy.
- C. The amount of insurance available from Underwriters for covered claims arising from a single act, omission, or event, or from related acts, omissions, or events, shall be limited to the sum described in a **Declarations** or **Endorsement** under the heading of "Per Claim" limit, and this amount shall not be multiplied or expanded, regardless of the number of injuries, claimants, or litigants, or the number of claims, lawsuits, arbitrations, or legal or administrative proceedings which result.
- D. For covered claims which arise from different or unrelated acts, omissions, or events which are first reported to Underwriters within the same policy year, the insurance available from Underwriters shall be limited to the total sum described in the **Declarations** or **Endorsement** under the heading of "Aggregate" limit, and shall not be multiplied or expanded, regardless of the number of injuries, claimants, or litigants, or the number of claims, lawsuits, arbitrations, or legal proceedings which result.
- E. The "Per Claim" and "Aggregate" limits of liability under this policy are not cumulative, even if related acts, omissions, accidents, incidents or events span more than one policy year.

#### 2. EFFECTS OF SUBSEQUENT DECLARATIONS OR ENDORSEMENTS

Successive policy **Declarations** or **Endorsements** may be issued to the **Insured** by Underwriters, upon renewal or at certain other times. The policy **Declarations** or **Endorsement** applicable to such **Insured's** coverage when a claim is reported to Underwriters shall be the **Declarations** or **Endorsement** most recently issued prior to the **Insured's** report of the claim.

#### 3. DUTIES OF INSURED IN EVENT OF A CLAIM

When the **Insured** first becomes aware of any act, omission, event, incident, or accident which may give rise to a claim against such **Insured**, or if the **Insured** obtains knowledge or information from any source that such a matter is contemplated, likely, or has been initiated, said **Insured** must promptly give Underwriters written notice of the claim, providing such information as is known to the **Insured**, as well as any information subsequently becoming known to the **Insured** or requested by Underwriters. The **Insured** must promptly provide Underwriters with written notice of the particulars concerning the matter, including information regarding the identity of persons and entities involved, the time, place, and circumstances of the events or occurrences, and names and addresses of injured

parties and witnesses. Such Insured must also promptly forward every demand, notice of intention to file suit, summons, subpoena, or other legal process, which the Insured or his representatives receive. A claim under this policy shall not be considered made or reported unless and until the Insured provides Underwriters with written notice.

#### 4. SETTLEMENT, CONSENT AND DEFENSE

##### A. SETTLEMENT

- 1) No settlement shall be made or negotiated, and no **Costs, Charges and Expenses** shall be incurred without Underwriters' consent, such consent not to unreasonably withheld. Underwriters shall have the right to investigate and settle any claim; however, no settlement shall be made without the consent of the Named Insured, such consent not to be unreasonably withheld.
- 2) Underwriters will not settle any claim against an Insured physician, an approved healthcare professional or an approved locum tenens involving direct patient care without the consent of the Named Insured listed on the policy. As all employed and contracted personnel share limits with the Named Insured, and all settlements are reported on behalf of the Named Insured, such Insured's consent is required for settlement.

All settlements will be reported to the National Practitioner Data Bank and applicable state agencies in compliance with Federal and State laws. While all settlement will be made on behalf of the Named Insured physician, all defendant parties will be reported to the National Practitioner Data Bank (NPDB), and any applicable state agency.

##### B. CONSENT

- 1) Underwriters may from time to time recommend settlement of a claim. This recommendation will be based on careful consideration of all circumstances surrounding the Insured's potential liability. Such Insured agrees to give careful consideration to this recommendation.
- 2) If Underwriters recommend a settlement and such Insured disagrees, and elects to contest or continue any legal proceedings, then Underwriters' liability will be limited to 50% of the amount in excess of the amount for which the claim could have been settled, including **Costs, Charges and Expenses**. Underwriters will state their recommended settlement figure in writing.

##### C. DEFENSE

- 1) With respect to any claim which falls, or is claimed to fall, in whole or in part within the insurance coverage of this policy, Underwriters shall have the sole and exclusive right to investigate, negotiate, evaluate, control, and direct the defense of such matter, including the right to appoint legal counsel behalf of the Insured, as may be permitted or limited by law. With respect to any covered claim, legal counsel selected by the Insured shall not be permitted to intervene or substitute into the defense of the matter without the prior consent and written approval of Underwriters.
- 2) Underwriters shall have the right and duty to defend any claim and such right and duty shall exist even if any of the covered allegations are groundless false or fraudulent. **Costs, Charge and Expenses** incurred by Underwriters shall be paid by Underwriters as a part of, and not in addition to, Underwriters' Limit of Liability set forth in the **Declarations**.



- 3) Underwriters shall have no obligation to pay any Loss, including Costs, Charges and Expenses or to defend or continue to defend any claim after the limit of liability as set forth in the Declarations has been exhausted by payment of Loss.

#### 5. TERRITORY

This policy applies to claims arising out of treatment rendered, or not rendered and brought in the United States of America.

#### 6. ASSISTANCE AND COOPERATION

The Insured is required to cooperate with Underwriters in all respects in matters pertaining to this insurance and, upon request of Underwriters, shall provide information, attend hearings and trials, and assist in making settlements, securing and giving evidence, giving statement and depositions where requested, obtaining the attendance of witnesses, and otherwise facilitating the conduct of any proceeding in connection with the subject matter of this insurance, including a review of the claim or lawsuit by a medical review and advisory committee or similar committee of a professional society or organization as may be selected by Underwriters. Such Insured must not voluntarily make any payment, assume any obligation, or incur any expense with respect to a covered claim except with prior written consent of Underwriters.

#### 7. PREMIUMS GENERALLY

The insurance available under the policy is provided in return for, and expressly conditioned upon, timely payment by the Insured of a premium established by Underwriters. All premiums for this policy shall be computed solely by Underwriters in accordance with Underwriters' procedures and rating plans applicable to this insurance. In the event of a change in the Insured's professional practice or activities which, in the opinion of Underwriters, materially alters the risk or affects the hazard insured against, as a condition of continued coverage Underwriters shall have the right to impose and obtain additional premiums consistent with Underwriters rating plans applicable to such practices or activities. The Insured is required to make and retain records of such information as is necessary for premium computation according to procedures and rating plans of Underwriters, and must make copies of such records available to Underwriters at such time as Underwriters may reasonably request.

#### 8. PREMIUM PAYMENTS — AUTOMATIC TERMINATION

All premiums for this policy are payable annually as established by Underwriters. Unless the time for payment is extended by Underwriters in writing, the Insured will be deemed in default if the premium is not paid on or before its due date, and the policy will terminate automatically, without notice, as of 12:01 a.m. Standard Time at the expiration of the period through which the premium has been paid. It is the Insured's duty to ensure that premiums are promptly paid to Underwriters, regardless of whether premium statements are received from Underwriters.

#### 9. OTHER INSURANCE

If the Insured has other valid and collectible insurance for acts, omissions, events, incidents, or accidents covered under this policy, or any other source for indemnification or reimbursement for damages, settlement, legal fees, costs, or expenses as a result of such matters, insurance under this policy shall not apply until the limits of such other insurance or other sources have been exhausted.

If any individual or professional corporation identified under this policy as an "Additional Insured" or is also covered under a separate Underwriters policy, any exclusions of coverage under such separate Underwriters policy shall automatically apply to this policy, and no coverage shall be available when liability is imposed, or sought to be imposed, upon such individual or professional corporation based upon acts or omissions excluded under this policy or such separate Underwriters policy.

## 10. SUBROGATION AND REIMBURSEMENT FOR THIRD PARTY LIABILITY

- A. Subrogation — In the event of any payment by Underwriters under this policy, Underwriters shall be subrogated to the Insured's rights of recovery against any person or organization and the Insured must promptly execute and deliver whatever documents, instruments, or papers are necessary and appropriate to effectuate said subrogation, and to do whatever else is necessary to secure such rights for Underwriters. The Insured must do nothing to adversely influence or prejudice the subrogation rights of Underwriters.
- B. Reimbursement for Third Party Liability — In the event the Insured asserts any claim against a third party for damages, indemnification, contribution, or reimbursement for events for which sums were paid under this policy on the Insured's behalf, Underwriters will have a lien against such sums recovered by the Insured to the extent that sums were paid by Underwriters, and the Insured is required to promptly execute and deliver any documents, instruments, or papers necessary to effectuate such lien, and to do whatever else is necessary to secure such lien rights of Underwriters, doing nothing to prejudice Underwriters' lien rights.

## 11. REPRESENTATIONS

- A. By acceptance of this policy, the Insured acknowledges that the statements made in the Application for insurance are true and correct, that said Insured and his employees, agents, or representatives have not withheld or failed to disclose pertinent information, and that the Insured has given careful consideration to the statements and information provided. Said Insured further acknowledges that such statements are material representations, and that any policy issued by Underwriters is issued in reliance upon the truth and accuracy of such statements. The Insured further agrees that this policy embodies all agreements, representations and commitments by Underwriters, or any of its employees, agents, representatives or counsel regarding the subject of insurance coverage.
- B. The Insured agrees to promptly report to Underwriters any material changes in the information previously reported to Underwriters in connection with this insurance. Further, the Insured agrees that any material changes in professional practice or activities may be a basis for imposition of an additional premium, at the election of Underwriters, which is consistent with its rating plans, as well as imposition of other terms, conditions, or limitations of insurance coverage, including cancellation if Underwriters determines the changed circumstances affect the hazard insured against.

## 12. WAIVER

Notice to any representative of Underwriters, or knowledge possessed by any representative or person employed by or related to Underwriters shall not constitute a waiver or change of any Part of this policy, or preclude Underwriters from asserting any right under the terms of this policy, nor shall the terms of this policy be deemed to be waived or changed by virtue of any representation or written or oral statement by Underwriters or their representatives, except as such waiver or change may be described by Underwriters in an Endorsement or policy Declarations issued to the Insured.

## 13. ASSIGNMENTS AND ACTIONS AGAINST UNDERWRITERS

No action shall lie against Underwriters unless, as a condition precedent thereto, the Insureds shall have fully complied with all the terms of this policy, nor until the amount of the Insureds' obligation to pay shall have been fully and finally determined either by judgment against them or by written agreement between them, the claimant and Underwriters. Nothing contained herein shall give any person or organization any right to join Underwriters as a party to any claim against the Insureds to determine their liability, nor shall Underwriters be impleaded by the Insureds or their legal representative in any claim. Assignment of interest under this policy shall not bind Underwriters unless their consent is endorsed hereon.

#### 14. TERMINATION

- A. Insurance coverage under this policy ends upon cancellation, upon the end of the policy period specified in the policy **Declarations** or **Endorsement** issued to the **Insured**, at the end of the **reporting period** specified in the reporting **Endorsement** issued to such **Insured**, or upon automatic termination of the policy relating to nonpayment of premium or relocation of the designated principal place of practice, as described in the General Conditions, whichever occurs first.
- B. If any individual or solo professional corporation identified under this policy as an "Additional **Insured**" or "Non-Physician Healthcare Professional" is no longer employed or associated with the **Insured**, and fails to obtain insurance coverage equivalent to the insurance afforded herein for the period the individual was employed or associated with the **Insured**, or if said **Insured** fails to obtain such coverage on behalf of such individual, insurance from Underwriters otherwise available to such person, or to the **Insured** under this policy for acts or omissions of such person shall automatically terminate except for those claims first reported to Underwriters during the period of employment or association.

#### 15. CANCELLATION

- A. Insurance coverage under this policy for the **Insured** is automatically canceled, upon death, permanent disability, or a judicial determination of incompetency.
- B. In addition to the grounds for cancellation described in this policy, and except as otherwise limited by applicable law, insurance coverage may be cancelled by the **Insured** or Underwriters, without cause, and without any cause of action accruing against the canceling party, upon written notice to the other specifying the date following which the cancellation shall be effective, in which case the date specified shall constitute end of the policy period; provided however, that if Underwriters cancel for any reason other than non-payment of premium, at least 30 days advance written notice of cancellation shall be mailed to the **Insured** at the **Insured's** address as stated in the policy **Declarations**.
- C. Should the **Insured** cancel this policy prior to the state expiration date listed on the **Declarations**, a minimum 25% earned premium surcharge will be added prior to the calculation of the return premium.

#### 16. AVAILABILITY AND TERMS OF REPORTING ENDORSEMENT

If the **Insured** is identified by Underwriters under the heading of "Named **Insured**" in a policy **Declarations** or **Endorsement**, the **Insured**, and the **Insured's** estate or legal representative, shall have the right, upon written request and following payment of a premium to be determined by Underwriters at that time, to have issued reporting **Endorsement (s)** providing an additional **reporting period**, unless the termination of the **Insured's** coverage was for non-payment of premium, in which case the advance payment of the pro-rata premium through the date of cancellation must also be made to Underwriters before reporting **Endorsement (s)** shall be issued. Insurance coverage under a reporting **Endorsement** may be modified by terms and conditions established by Underwriters as set forth in such reporting **Endorsement (s)**. However, the amount of insurance under reporting **Endorsement (s)** shall be the same as the limits of liability in the policy **Declarations** or **Endorsement (s)** issued to the **Insured** by Underwriters prior to the termination of the policy. In this event, it is further provided that the **Insured** shall be entitled to issuance of reporting **Endorsement (s)** by Underwriters, but only upon such terms and conditions and payment of additional premiums as may be determined by Underwriters.

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## **17. INSPECTION AND AUDIT**

Underwriters and their representatives shall be permitted to inspect the **Insured's** professional office premises, property and operations at any time. Neither Underwriters' right to make such inspections nor the making thereof, nor any report thereon shall constitute an undertaking by Underwriters that such property or operations are safe. Underwriters may request and undertake a reasonable examination and audit the **Insured's** books and records insofar as they relate to the subject matter of this insurance.

## **18. ARBITRATION**

Any dispute between the **Insured** and Underwriters arising out of, in connection with or relating to this policy shall be submitted to binding arbitration in accordance with the rules of the American Arbitration Association ("AAA") then in effect, except that the arbitration panel shall consist of one arbitrator selected by the **Insured**, one arbitrator selected by Underwriters and a third independent arbitrator selected by the first two arbitrators.

## **19. BANKRUPTCY OF INSURED**

Insolvency or bankruptcy on the part of the **Insured** will not release Underwriters from the payment of damages for injury sustained or loss occasioned during the term of said policy.

## **20. ENTIRE AGREEMENT**

By acceptance of this policy, the **Insured** agrees that this policy embodies all agreements existing between them and Underwriters or any of their agents relating to this insurance. Notice to any agent or knowledge possessed by any agent or other person acting on behalf of Underwriters shall not effect a waiver or a change in any part of this policy or estop Underwriters from asserting any right under the terms of this policy, nor shall the terms be deemed waived or changed except by written **Endorsement** issued by Underwriters issued to form part of this policy.

## **21. PRINCIPAL PLACE OF PRACTICE**

The **Insured** agrees that insurance coverage under this policy is available only if the **Insured** maintains the principal place of practice in the location identified by the **Insured** in his **Application** for insurance by Underwriters, and that relocation by the **Insured** to another principal place of practice without notification to and agreement by Underwriters as evidenced by Underwriters' issuance of a policy **Declarations** or **Endorsement** shall constitute an automatic termination of insurance coverage under this policy.

## **22. NON-ASSESSABILITY**

This policy is not assessable.

## **EXCLUSIONS**

### **1. No Defense or Payment of Damages**

There are certain claims involving direct patient treatment that this policy does not cover. Underwriters will neither defend any **Insured** nor pay any damages because of a claim, which arises out of or results from any of the following:

- A. If not reported by the **Insured** to Underwriters during the policy period.

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- B. Any liability sought or imposed upon the **Insured** because of the **Insured's** status as a partner, representative, associate, or joint venturer with any person or entity, or as a result of the **Insured's** status as a member, shareholder, officer, director, trustee, agent, or representative of a corporation (other than the **Named Insured's** solo professional corporation) or unincorporated association.
- C. Any liability sought or imposed upon the **Insured** for acts or omissions of physicians, professional corporations, or persons associated with or employed by the **Insured** other than nurses, medical assistants, and persons not required to be licensed or certified to perform any duties for which they are employed, unless the **Insured** has given written notice of such employment or association to Underwriters within 10 days after such employment or association commences, and Underwriters have issued a **Declarations or Endorsement** identifying those persons under the heading of "Non-Physician Healthcare Professionals."
- D. Any liability sought or imposed upon the **Insured** as a result of acts or omissions during any employment by the United States Government or any other governmental or public entity.
- E. Any liability sought or imposed upon the **Insured** as a result of the use, administration or prescription of any drug, pharmaceutical or medical device disapproved or not yet approved by the United States Food and Drug Administration for treatment of human beings, unless the **Insured** has requested approval from Underwriters for the use, administration or prescription of such drug, pharmaceutical or medical device and Underwriters have given such approval in writing.
- F. Any liability sought or imposed upon the **Insured** as a result of an occurrence happening while the license to practice medicine or the certification of the individual responsible for providing direct patient treatment is not in effect.
- G. Any liability sought or imposed upon the **Insured** as a result of an occurrence involving the dispensing of controlled substances during the course of direct patient treatment which happened while the license or registration to dispense such controlled substances issued to the individual responsible for providing direct patient treatment is not in effect.
- H. Any liability sought or imposed upon the **Insured** as a result of the **Insured's** activity as an owner, shareholder, partner, investor, joint venturer, officer, director, administrator, or medical director of a hospital, clinic, ambulatory care center, sanitarium, skilled nursing facility, surgery center, convalescent hospital or home, hospice, laboratory, free-standing treatment facility, pathology laboratory, radiology facility, emergency or urgent care center, health maintenance organization, health care service plan, preferred provider organization, or any similar health care entity or delivery system, health care supply or support organization, or any other business organization or operation, whether or not medically related, which is not identified as a "**Named Insured**" or an "**Additional Insured**" in a **Declarations or Endorsement**. This exclusion shall not apply to the extent the **Insured's** liability arises out of the **Insured's** rendering or failing to render direct patient care as outlined under Scope of Coverage, in the event of the **Insured's** personal and direct participation in the events for which damages or liability is sought or imposed.
- I. Any liability sought or imposed because of the **Insured's** written or oral agreement to hold harmless, indemnify, or otherwise assume another's obligation or liability, if liability or the amount of damages sought or imposed upon the **Insured** is greater than that which would exist in the absence of such an agreement.
- J. Any liability sought or imposed, or sought to be imposed, as a result of intentional, willful, criminal, malicious or fraudulent acts.
- K. Any liability sought or imposed as a result of advertising, broadcasting, or telecasting activities.

- L. Any liability sought or imposed for the **Insured's** acts or omissions while the **Insured's** principal place of practice is other than that identified by the **Insured** in prior notification to Underwriters.
- M. Any liability sought or imposed upon the **Insured** as a result of a claim for return or nonpayment of fees or governmental payments for direct patient treatment.
- N. Any liability sought or imposed upon the **Insured** as a result of any actual or alleged involvement in any antitrust law violations.
- O. Any liability sought or imposed for injury, damage, sickness, disease, or death of any of the **Insured's** employees, agents, or representatives, arising out of and in the course of such person's employment by the **Insured**, or under any workers' compensation, unemployment compensation, disability benefits, or similar law relating to employee benefits, welfare, or entitlements.
- P. Any liability sought or imposed upon the **Insured** as a result of any defect in goods or products developed, manufactured, assembled, sold, handled or distributed by the **Insured** or others trading under the **Insured's** name, except that defects in goods and products which are dispensed or administered to patients of the **Insured** or altered by an **Insured** in his or her provision of direct medical treatment are not excluded.
- Q. Any liability sought or imposed for property damage to property owned, leased, or rented, in whole or in part, by the **Insured**, or entrusted to the care, custody, and control of the **Insured**, or the **Insured's** employees, agents, or representatives.
- R. Administrative Proceedings

Underwriters will neither defend nor pay sanctions or penalties, which result from any of the following:

- 1) Any disciplinary or administrative proceeding, such as a state medical licensing board review; or
  - 2) A review of the quality of the **Insured's** care by agencies or entities conducting utilization review for government and private insurance companies.
  - 3) A review of the **Insured's** billing practices by the Office of the Inspector General of the Department of Health and Human Services, by the United States Department of Justice, by a state agency, by a County, by a County Hospital, by a Hospital of any type, by any medical health plan or provider when taking action which may result in the termination of your right to provide services under any program for the provision of health care services.
- S. Any liability sought or imposed for damage or injury resulting from:
- 1) Surgical proceedings involving the spinal column, including the brain, unless:
    - a. Required by a bonafide emergency requiring immediate intervention; or
    - b. The **Insured** participates as an assistant surgeon only.
  - 2) Cosmetic Surgery
  - 3) The use of chymopapain.
  - 4) Chelation therapy in the treatment of cardiovascular disease.
  - 5) Refractive keratoplasty procedures, including but not limited to Lasik procedures.

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- 6) Liposuction.
- 7) The delivery of infants, except in the case of a bonafide emergency.
- 8) The use of intragastric balloons or similar medical devices in connection with a program directly or indirectly related to weight control or reduction.
- 9) The practice of medical weight management including surgical weight reduction procedures.
- 10) Any treatment for sexual dysfunction, including but not limited to surgical alteration procedures.
- 11) The practice of Telemedicine
- 12) The practice of the specialty of Emergency Medicine.
- 13) The use of drug shock therapy.
- 14) The use of laetrile.
- 15) The practice of diagnostic radiology, except in the case of a bonafide emergency.
- T. Regardless of when any claim, loss, arbitration, or proceeding is reported to Underwriters, no insurance coverage is afforded to the Insured for acts, omissions, events, accidents, or incidents, which occur prior to the retroactive date.
- U. There is no coverage under this policy for payment of exemplary or punitive damages, civil fines, or assessments.
- V. There is no coverage of any kind for any bodily injury or property damage:
  - 1) With respect to which insurance is or can be available to the Insured under a nuclear energy liability policy.
  - 2) Which results from the hazardous properties of nuclear material for which financial protection would be required under the Atomic Energy Act of 1954 (as amended) or for which the Insured would be entitled to indemnity from the United States of America pursuant to the Atomic Energy Act of 1954 (as amended).

## 2. Defense Only — No Payment of Damages

Underwriters will defend an Insured against a claim otherwise covered by this policy, which includes allegations of:

- A. A guarantee of the results of any direct patient treatment.
- B. Sexual relations, sexual abuse, sexual contact, sexual intimacy, sexual battery, or sexual exploitation by an Insured.
- C. An occurrence while any Insured rendering direct patient treatment is under the influence of alcohol, narcotics or hallucinogenic agents, or which results from other substance abuse.

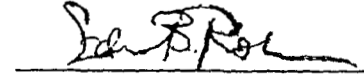
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In consideration of payment of premium, in reliance upon the statements and representations in the **Application (s)** for insurance and the **Declarations** made a part hereof, and subject to all the terms of this policy, Underwriters agree with the **Named Insured physician** as set forth above.

This policy shall not be effective for any purpose unless and until a completed **Declarations** is issued to the **Named Insured physician** by Underwriters. Such **Declarations** shall form a part of this policy.

NAS Insurance Services, Inc.


By:



On behalf of the Underwriters  
providing this insurance.

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## NAS Insurance Services, Inc.

Application for CLAIMS-MADE PROFESSIONAL LIABILITY INSURANCE — Physicians & Surgeons  
 Underwritten by Certain Underwriters at Lloyd's of London

**IMPORTANT NOTICE:**

You are applying for coverage under a claims-made policy. If your application is accepted by Underwriters, the insurance is limited to matters described in the policy which arise out of events described in the policy occurring on or after the retroactive date in the applicable policy declaration issued to you, AND are first reported by you to Underwriters, either prior to termination of this policy or within any policy period or additional reporting period applicable to you.

**1 PERSONAL INFORMATION**

<u>Jeffrey</u>	<u>Francis</u>	<u>Hartford</u>
<small>First Name</small>	<small>Middle Name</small>	<small>Last Name</small>
<u>Jan. 28, 1958</u>	<u>Cur Bank, MT</u>	<u>Male</u>
<small>Date of Birth (Month/Date/Year)</small>	<small>Place of Birth (City, State, Country)</small>	<small>Male/Female</small>
<u>10035 Highlander</u>	<u>Boise ID 83709</u>	<u>208-362-2946</u>
<small>Home Address</small>		<small>Telephone Number</small>
<u>999 N Curtis Ste 404</u>	<u>Boise</u>	<u>ID 83706</u>
<small>Principal Office Address</small>	<small>City</small>	<small>State Zip Code</small>
<u>ADA</u>	<u>208-367-3055</u>	<u>208-367-6622</u>
<small>County</small>	<small>Telephone Number</small>	<small>Fax Number</small>
		<u>jhartfordmd@aol.com</u>
		<small>E-Mail</small>
<u>Mailing Address (if different from office address)</u>		
<u>516 74 6547</u>	<u>84-1393841</u>	
<small>Social Security Number</small>	<small>or Tax ID Number</small>	<small>Federal EIN</small>

**2 REQUESTED COVERAGE EFFECTIVE DATE**

June 1, 2003

<small>Month</small>	<small>Day</small>	<small>Year</small>
----------------------	--------------------	---------------------

**3. REQUESTED LIABILITY LIMITS**

Check one: **Limit per claim / annual aggregate**

☐ \$500,000 / \$1,500,000  
 ☐ \$1,000,000 / \$1,000,000  
 ☒ \$1,000,000 / \$5,000,000

Deductible Amounts

Check one:

☒ \$7,500  
 ☐ \$10,000  
 ☐ \$25,000  
 ☐ \$50,000  
 ☐ \$75,000  
 ☐ \$100,000

The minimum deductible is \$7,500 for non-surgical specialties, and \$10,000 for surgical specialties. A higher deductible may be applied to the policy at the election of either the applicant or NAS' Underwriting Department.

**Licenses/Board Certification/CME**

**2. ACTIVE LICENSES**

Idaho	M5269	5/13/03	6/30/05
State	License Number	Date Licensed	Expiration Date
Idaho			
State	License Number	Date Licensed	Expiration Date
Idaho			
State	License Number	Date Licensed	Expiration Date
Idaho			12/31/03
Rescinded License		Date of Issue	Expiration Date

**3. BOARD CERTIFICATION**

Are you certified by one or more boards of the American Board of Medical Specialties? ☒ Yes ☐ No

AAFP	1989	2003	2003
Name of Board	Year Originally Certified	Certification Expires	Recertified (Year)
Name of Board	Year Originally Certified	Certification Expires	Recertified (Year)

If not currently certified, are you scheduled to take the board examination?

☐ Yes ☐ No When? \_\_\_\_\_

If eligible, have you taken the written exam?

☐ Yes ☐ No When? \_\_\_\_\_ Pass/Fail

Have you ever failed the written exam?

☐ Yes ☒ No # of times \_\_\_\_\_

If eligible, have you taken the oral exam?

☐ Yes ☐ No When? \_\_\_\_\_ Pass/Fail

Have you ever failed the oral exam?

☐ Yes ☒ No # of times \_\_\_\_\_

If you are no longer eligible to take the board exams, state reason: \_\_\_\_\_

**6. CONTINUING MEDICAL EDUCATION**

How many hours of category 1 CME have you taken in each of the last two years? 124

**Medical Education and Training**

**7. MEDICAL SCHOOL**

University of Washington	Seattle	WA	USA
School	City	State	Country
1982-1986			MD
From (Month/Year)	To (Month/Year)		Degree

8 INTERNSHIP

Family Practice Residency of Idaho Boise ID USA  
Hospital City State Country

7.86 6.87  
From (Month/Year) To (Month/Year)

9 RESIDENCY

Family Practice Residency of Idaho Boise ID USA  
Hospital City State Country

Family Practice 7.87 6.89  
Medical Specialty From (Month/Year) To (Month/Year)  
Residency Completed? ☒ Yes ☐ No

10. ADDITIONAL RESIDENCY

Hospital City State Country

Medical Specialty From (Month/Year) To (Month/Year)  
Residency Completed? ☐ Yes ☐ No

11 FELLOWSHIPS AND ADDITIONAL MEDICAL TRAINING

Hospital or Facility City State Country

Type of Training From (Month/Year) To (Month/Year)

Hospital or Facility City State Country

Type of Training From (Month/Year) To (Month/Year)

12. MILITARY

Are you currently active in military service? ☐ Yes ☒ No Branch \_\_\_\_\_ Reserve? ☐ Yes ☐ No

Scope and Practice

13. SPECIALTY

A. What is your medical or surgical specialty? Family Practice

B. Do you limit your practice to this specialty? ☒ Yes ☐ No

C. Do you have a sub-specialty? If Yes, please describe: \_\_\_\_\_

Do you limit your practice to this sub-specialty? ☐ Yes ☐ No

D. If the answer to 13 B and C is No, please describe what medical specialty you practice. \_\_\_\_\_

**14. CURRENT PRACTICE LOCATIONS**

List all offices where you currently practice. If you practice at more than two locations, list them on your letterhead.

Address/Suite #	City	ID	State	Zip
999 N Curtis Ste 404	Boise			83705

**15. HOSPITAL AND AMBULATORY SURGERY CENTER PRIVILEGES**

List all hospitals and ambulatory surgery centers where you currently have privileges or have applications for privileges pending. Indicate type of privileges and restrictions, if any. If you want NAS to send evidence of coverage (certificate of insurance) to any of these hospitals, please indicate.

Hospital/Facility	City	Type of Privileges	Restrictions	*Certificate to be sent? <input type="checkbox"/> Yes <input type="checkbox"/> No
St Alb EMC	Boise	Admittiv	NONE	
Intermountain Hospital	Boise	Admittiv	NONE	
Sun Health Hospital	Boise	Consulting	NONE	

\* A certificate of your insurance will be sent only if you request it and if the Underwriting Department approves your application for insurance.

**16. TYPE OF PRACTICE**

Check the boxes that best describe the type of practice you have?

☒ Solo practice not incorporated ☐ Solo medical corporation ☐ Professional association  
☐ Fictitious name entity or "DBA" ☐ Other \_\_\_\_\_

If you checked any box other than Solo practice not incorporated, list below the name of the entity(ies), your status, and names of associates, shareholders or employed physicians. Use a separate sheet if necessary.

Name of entity (if any) Status (partner, shareholder, employee, contractor)

Names of partners, shareholders, employers or associates Names of employed physicians

Name of entity (if any) Status (partner, shareholder, employee, contractor)

Names of partners, shareholders, employers or associates Names of employed physicians

Separate entity coverage is not available under this program. All entities will share limits with the individual physician.

Attach a sample of your professional, partnership or corporation stationery.

**17. OTHER ASSOCIATED PHYSICIANS**

Do you practice with other physicians not listed above in Question 16? ☒ Yes ☐ No  
 If Yes, list the physician(s) and indicate the nature of your association (e.g. common billing, share offices, share employees, common letterhead). List additional physicians on an additional sheet of paper.

Ashley Davis	Share office space
Name of physician(s)	Nature of association
_____	_____
Name of physician(s)	Nature of association
_____	_____
Name of physician(s)	Nature of association
_____	_____

**18. ON-CALL PHYSICIANS**

Do all members of your night, weekend, vacation or illness "on-call" referral group carry professional liability insurance? ☒ Yes ☐ No

If No, list names of those who do not: \_\_\_\_\_

**19. NON-PHYSICIAN HEALTH CARE PROVIDERS**

Indicate if you employ any healthcare professionals in the following categories. List the hours worked per week. Attach a protocol of the services performed and a non-physician Healthcare Provider Application for each employee.

	Total Hours Per Week	Number of Employees
Nurses .....	30	1
Laboratory Technicians .....	_____	_____
Physiotherapists .....	_____	_____
X-ray Technicians .....	_____	_____
Others (describe) .....	_____	_____
Nurse Anesthetists (CRNA) .....	_____	_____
Nurse Perfusionist .....	_____	_____
Nurse Practitioner .....	_____	_____
Physician's Assistant .....	40	1
Psychologists .....	_____	_____
Scrub Nurses .....	_____	_____
Surgical Technicians .....	_____	_____
Others (describe) .....	_____	_____

☒ Hospital, psychiatric\*

☐ Industrial firm medical care facility

☐ Laboratory

☐ Nursing home\*

☐ Sanitarium\*

☐ Urgent care clinic

☐ X-ray or imaging facility

☐ Other health care facility

00061

Provide a general description of your activities when you are not practicing or for which other professional liability coverage is provided and will not be covered by Underwriters:

C. If you are employed elsewhere for which coverage is provided by the facility, you must still identify the facility in your answer to question 80.

D. Indicate your weekly average practice activity:

	Number/Week
Patients seen in the office (non-surgical)	120
Patients seen in the hospital (non-surgical)	0-1
Patients seen only by paramedical personnel that you employ	40
Number of surgical assists you perform	0-1
Anesthesiologists. Procedures for which you administer anesthesia	0
Pathologists. Procedures you perform without patient advice	0

E. Approximate yearly percentage of medical service provided in the following categories:

Managed Care	All Other
HMO/IPA members	Industrial (Workers Comp)
Medicare HMO	Direct pay by patient
MediCal/Medicaid HMO	Private Indemnity Insurance
PPO	Medicare indemnity
	MediCal/Medicaid indemnity
	Other

22. SURGERY/ANESTHESIA (FOR CALIFORNIA APPLICANTS; California Business & Professions Code requires surgical centers and other facilities, including physicians' offices, administering certain types of anesthesia to be licensed and accredited)

Do you perform surgery at hospitals or outpatient facilities not licensed or accredited either by the Joint Commission on Accreditation of Health Care Organizations or the American Association for Accreditation of Ambulatory Surgery Facilities, etc.? ☐ Yes ☐ No  
If Yes, provide name of facility(ies) and list procedures performed.

Do you or does anyone else perform surgery in your office using anesthesia, except local anesthesia and/or peripheral nerve blocks, or both? ☐ Yes ☐ No  
If Yes, please describe the procedures and type of anesthesia.

Who administers the anesthesia?

Do you supervise nurse anesthetists (CRNAs)? ☐ Yes ☐ No

If Yes, how many?

Has your office been accredited or licensed for outpatient surgery by a national organization such as the American Association for Accreditation of Ambulatory Surgery Facilities or Accreditation Association for Ambulatory Health Care?

☐ Yes ☒ No

If Yes, please provide name of organization and date accredited/licensed:

A. What means of monitoring are in place preoperatively, during surgery, and postoperatively? (Use a separate sheet of paper.)

B. Do you maintain separate insurance for the surgical suite?

☐ Yes ☐ No

If Yes, please provide name of carrier, limits of liability, and expiration date of policy.

## 23. DELIVERIES

Do you perform deliveries?

☐ Yes ☒ No

If Yes, provide name of the facility(ies), number of deliveries performed, and the name of the Accreditation organization

## 24. X-RAYS (BY NON-RADIOLOGISTS)

Do you take and interpret X-Rays in your office?

☐ Yes ☒ No

If Yes, describe type of X-Ray taken and interpreted.

## 25. PSYCHIATRY

If you plan to currently participate in managed care programs, please respond to the following questions

Is therapy limited by the managed care organization (length of time, number of sessions)?

☐ Yes ☐ No

If Yes, please describe:

Are type and amount of medications prescribed to enrollees dictated by the health plan?

☐ Yes ☐ No

If Yes, please describe:

Does the plan encourage non-physician psychotherapy versus physician treatment and evaluation?

☐ Yes ☐ No

If Yes, please describe the relationship between non-physician therapists and you regarding care and treatment of enrollees.

## 26. TELEMEDICINE

Do you practice: ☐ Teleradiology?

☐ Other Telemedicine?



Please check all procedures you perform, and provide estimates of how many you perform per year.  
☒ Check here if none.

- |   |   |   |   |
|---|---|---|---|
| <input type="checkbox"/> Acupuncture.....             | # | <input type="checkbox"/> Intraocular lens implants .....  | # |
| <input type="checkbox"/> Angiography. ....            | # | <input type="checkbox"/> IVPs .....   | # |
| <input type="checkbox"/> Angioplasty. ....            | # | <input type="checkbox"/> Myelography .....  | # |
| <input type="checkbox"/> Aortography. ....            | # | <input type="checkbox"/> Pacemaker insertions, temporary .....                                  | # |
| <input type="checkbox"/> Cardio catheterization ..... | # | <input type="checkbox"/> Pacemaker insertions, permanent .....                                  | # |
| <input type="checkbox"/> Contrast media in CNS .....  | # | <input type="checkbox"/> Pericocular testing .....  | # |
| <input type="checkbox"/> Coronary angiography. ....   | # | <input type="checkbox"/> Therapeutic use of radioactive materials .....                         | # |
| <input type="checkbox"/> Drug shock therapy* .....    | # | <input type="checkbox"/> Use of Iactril® .....  | # |
| <input type="checkbox"/> Hair transplants .....       | # | <input type="checkbox"/> Use of chelation therapy in treatment of cardiovascular disease* ..... | # |

## 28 SURGICAL PROCEDURES

Please check which surgical procedures you perform and percentage of your total medical practice each represents. Do not include assisting at surgery

☐ Check here if done.

	No Performed Per Year	Percentage Practice/Year
<input type="checkbox"/> Abortions: Type		%
<input type="checkbox"/> Anesthesiology		%
<input type="checkbox"/> Cardiovascular surgery		%
<input type="checkbox"/> Chymopain injections*		%
<input type="checkbox"/> Colon and rectal surgery		%
<input type="checkbox"/> General surgery		%
<input type="checkbox"/> Gynecologic surgery (other than abortions)		%
<input type="checkbox"/> Hand surgery		%
<input type="checkbox"/> Head and neck surgery		%
<input type="checkbox"/> Laparoscopic cholecystectomy		%
<input type="checkbox"/> Other laparoscopic surgery		%
(Describe)		
<input type="checkbox"/> Liposuction*		%
<input type="checkbox"/> Neurosurgery		%
<input type="checkbox"/> Obstetrics*		%
<input type="checkbox"/> Ophthalmologic surgery		%
<input type="checkbox"/> Orthopedic surgery (include closed reductions)		%
<input type="checkbox"/> Orthopedic surgery - total joint replacement*		%
<input type="checkbox"/> Plastic surgery - cosmetic*		%
<input type="checkbox"/> Plastic surgery - other		%
<input type="checkbox"/> Refractive surgery*		%
<input type="checkbox"/> Spinal surgery - posterior lumbar fusion		%
<input type="checkbox"/> Spinal surgery - other spinal surgery*		%
<input type="checkbox"/> Surgery intended for weight reduction*		%
<input type="checkbox"/> Thoracic surgery (other than cardiovascular)		%
<input type="checkbox"/> Urologic surgery		%
<input type="checkbox"/> Vascular surgery		%

\* This Program does not provide coverage for these procedures

**Note:** If your surgical practice will change significantly in the coming year, attach a narrative description of the changes to this application.

29. WEIGHT CONTROL

Do you specialize in weight control practice?

☐ Yes ☒ No

If Yes, describe fully: \_\_\_\_\_

Do you prescribe or dispense medications for weight control purposes?

☒ Yes ☐ No

If Yes, are all drugs approved by FDA? Describe: yes

What percentage of your practice involves weight control? 5 %

30. SEX THERAPY

Do you specialize in, or does a significant portion of your practice include therapy, counseling, or prescription of medications for sexual dysfunction?

☐ Yes ☒ No

If Yes, explain methodology: \_\_\_\_\_

What percentage of your practice involves sexual therapy? 1/2 %

Does any portion of your practice include surgery for sexual dysfunction?

☐ Yes ☒ No

31. EXPERIMENTAL AND INVESTIGATIVE PROCEDURES

Do you use experimental procedures, drugs or therapy in treatment or surgery?

☐ Yes ☒ No

If Yes, describe fully: \_\_\_\_\_

If Yes, do you follow FDA-approved protocols?

☐ Yes ☐ No

What percentage of your practice involves experimental procedures, drugs or therapy in treatment or surgery? \_\_\_\_\_ %

32. MEDICAL PRACTICE ADVERTISEMENTS

Do you advertise your medical practice?

☒ Yes ☐ No

If Yes, provide copies of advertisements that you are currently using or have placed in yellow pages (other than general listing), periodicals, flyers and handouts. Provide a copy of the script if you use radio or film media.

33. OTHER PRACTICES

Do you own or control any separate company or enterprise related to your medical practice?

☐ Yes ☒ No

If Yes, please explain: \_\_\_\_\_

659 Physics

★  
Physicians & Surgeons,  
Doctor Of Medicine,  
M.D. & Doctor Of  
Osteopathy, D.O.

140	141	142	143	144	145	146	147	148	149	150	151	152	153	154	155	156	157	158	159	160	161	162	163	164	165	166	167	168	169	170	171	172	173	174	175	176	177	178	179	180	181	182	183	184	185	186	187	188	189	190	191	192	193	194	195	196	197	198	199	200	201	202	203	204	205	206	207	208	209	210	211	212	213	214	215	216	217	218	219	220	221	222	223	224	225	226	227	228	229	230	231	232	233	234	235	236	237	238	239	240	241	242	243	244	245	246	247	248	249	250	251	252	253	254	255	256	257	258	259	260	261	262	263	264	265	266	267	268	269	270	271	272	273	274	275	276	277	278	279	280	281	282	283	284	285	286	287	288	289	290	291	292	293	294	295	296	297	298	299	300	301	302	303	304	305	306	307	308	309	310	311	312	313	314	315	316	317	318	319	320	321	322	323	324	325	326	327	328	329	330	331	332	333	334	335	336	337	338	339	340	341	342	343	344	345	346	347	348	349	350	351	352	353	354	355	356	357	358	359	360	361	362	363	364	365	366	367	368	369	370	371	372	373	374	375	376	377	378	379	380	381	382	383	384	385	386	387	388	389	390	391	392	393	394	395	396	397	398	399	400	401	402	403	404	405	406	407	408	409	410	411	412	413	414	415	416	417	418	419	420	421	422	423	424	425	426	427	428	429	430	431	432	433	434	435	436	437	438	439	440	441	442	443	444	445	446	447	448	449	450	451	452	453	454	455	456	457	458	459	460	461	462	463	464	465	466	467	468	469	470	471	472	473	474	475	476	477	478	479	480	481	482	483	484	485	486	487	488	489	490	491	492	493	494	495	496	497	498	499	500	501	502	503	504	505	506	507	508	509	510	511	512	513	514	515	516	517	518	519	520	521	522	523	524	525	526	527	528	529	530	531	532	533	534	535	536	537	538	539	540	541	542	543	544	545	546	547	548	549	550	551	552	553	554	555	556	557	558	559	560	561	562	563	564	565	566	567	568	569	570	571	572	573	574	575	576	577	578	579	580	581	582	583	584	585	586	587	588	589	590	591	592	593	594	595	596	597	598	599	600	601	602	603	604	605	606	607	608	609	610	611	612	613	614	615	616	617	618	619	620	621	622	623	624	625	626	627	628	629	630	631	632	633	634	635	636	637	638	639	640	641	642	643	644	645	646	647	648	649	650
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Physicians & Surgeons,  
Doctor Of Medicine,  
M.D. & Doctor Of  
Osteopathy, D.O.  
(Cont'd)

[illegible]

Lauren F Hartford, M.D.

**Board Certified in Family Practice**  
**367-3055**

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★  
Physicians & Surgeons  
Doctor Of Medicine  
M.D. & Doctor Of  
Osteopathy, D.O.  
(Cont'd)

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Physicians & Surgeons,  
Doctor Of Medicine,  
M.D. & Doctor Of  
Orthopathy, D.O.  
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★  
Physician  
Doctor Of.  
M.D. & Doc  
Osteopath  
(Cont'd)

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**34 CURRENT MEMBERSHIPS AND ACTIVITIES**

List any membership in medical specialty societies, professional associations and hospital committees

Organization/Society/Committee Name	Title or position held
Idaho Medical Association	
Ada County Medical Association	
American Academy of Family Practice	

**35 PAST PRACTICE LOCATIONS**

List all locations you have practiced since completing your formal training (include military, private, teaching and group organizations)

Name/Type of practice	City/State	From (month/year) to (month/year)
Fairview Medical Clinic	Boise, ID	1989-1996
Name/Type of practice	City/State	From (month/year) to (month/year)
Name/Type of practice	City/State	From (month/year) to (month/year)
Name/Type of practice	City/State	From (month/year) to (month/year)
Name/Type of practice	City/State	From (month/year) to (month/year)

**36 PAST HOSPITAL STAFF PRIVILEGE LOCATIONS**

If you have relocated your practice within the past five years, list names and addresses of hospitals where you had staff privileges prior to relocation

Name of hospital	Street address	City	State	Zip
Name of hospital	Street address	City	State	Zip
Name of hospital	Street address	City	State	Zip
Name of hospital	Street address	City	State	Zip

### 57. PRIOR INSURANCE

List all professional liability carriers who insured you, starting with your most recent carrier.  
Use a separate page if necessary

Chicago Insurance Company	DEP1100114	01-03	none
Name of carrier	Policy number	Coverage dates	Claims-made/Occurrence
Address	Policy limits	Deductible	Annual Premium
CNA		89-98	
Name of carrier	Policy number	Coverage dates	Claims-made/Occurrence
Address	Policy limits	Deductible	Annual Premium
Name of carrier	Policy Number	Coverage dates	Claims-made/Occurrence
Address	Policy limits	Deductible	Annual Premium

Complete an "Authorization to Release Information" for carriers listed above (see page 16)

If current policy is claims-made, have you or do you intend to purchase "tail" coverage? ☒ Yes ☐ No

If you have purchased "tail" coverage from your former carrier, please attach a copy of the "tail" coverage endorsement to this application.

### 58. INSURANCE

Has any insurance carrier ever denied, declined, cancelled, refused to renew, restricted or rated up professional liability insurance? ☒ Yes ☐ No

If Yes, give complete details including dates.

Please attach a copy of any non-renewal or cancellation letter to this application

### 59. STAFF PRIVILEGES/MANAGED CARE ORGANIZATION ACTIONS OR INVESTIGATIONS

a. Have you ~~ever~~ had any hospital or surgical outpatient privileges denied, suspended, revoked, restricted, reduced, not renewed, proctored or modified in any way? ☐ Yes ☐ No

- b. Have you ever been investigated by any entity which as its principal activity is a health care service plan, third party administrator, or other business or organization arranging for the provision of health care services, or by any entity or organization providing or responsible for the provision of health care services, including any medical corporation, independent practice association, preferred provider organization, physical panel, or other entity or arrangement entering into agreements with third party payors for the provision of medical care, for the purpose of disciplining you or limiting, revoking or suspending your continued exercise, maintenance or renewal right or entitlement to provide medical or surgical care to persons receiving health care arranged or rendered by such entity or organization?

☐ Yes ☒ No

If Yes, please furnish details, including facility or managed care organization name, dates, allegations, circumstances, and outcome on your letterhead.

#### 40. GOVERNMENTAL ACTION

- a. Have you ever been investigated as the subject of, charged with or convicted of a misdemeanor or felony?

☐ Yes ☒ No

- b. Have you ever entered a "no contest" plea to a crime, other than a traffic violation?

☐ Yes ☒ No

If you answered "Yes" to question 40 a. or b., please furnish full details on your letterhead, including the following information:

1. The nature of the investigation, the charge made or entered against you and the date and jurisdiction in which it was made or entered;
2. The substance of the investigation or allegations made or entered in the charge;
3. The manner in which the investigation or charge was resolved (i.e., dismissal, conviction, etc.); and
4. Any additional information concerning the investigation or charge as you may deem appropriate.

- c. Have you ever been investigated by any state or federal regulatory body or specialty society?

☒ Yes ☐ No

- d. Has any governmental agency ever suspended, revoked, restricted, placed you on probation, or taken any other action against your medical license or your narcotics license?

☐ Yes ☒ No

If you answered "Yes" to question 40 c. or d., please furnish full details on your letterhead, including the following information:

1. The reasons for the investigation, suspension, restriction, termination, curtailment, revocation, or non-renewal of your license, and/or the disciplinary action;
2. The substance of both the allegations and findings in any such action, proceeding, hearing, or procedure involving the suspension, restriction, termination, curtailment, revocation, or non-renewal of your license, and/or disciplinary action;
3. The date of the suspension, restriction, termination, curtailment, revocation, or non-renewal of your license, and/or the disciplinary action, the full name of the licensing agency and its complete address;
4. Any additional information concerning such action, proceedings, hearing, or procedure as you may deem appropriate.

**41. HEALTH**

- a. Have you ever received treatment or consultation for drug or alcohol abuse? ☒ Yes ☐ No
- b. Are you being treated for any medical condition, disease or illness that affects your ability to practice medicine? ☐ Yes ☒ No

If you answered "Yes" to question 41 a. or b., please furnish details, which must include:

1. The nature of the condition for which you sought treatment or consultation; the hospital or other institution at which you were treated or consulted and its full address; the hospital or other institution with which you were affiliated at the time and its full address; the name of the individual with whom you were treated or consulted; the date(s) of treatment or consultation;
2. The name of the treatment or consultation and the recommended course for continuing treatment or consultation;
3. The manner in which the condition for which you were treated or consulted currently affects your day-to-day activities;
4. Any additional information concerning the treatment or consultation as you may deem appropriate.

**42. CLAIMS**

Have you ever been involved in a malpractice claim, suit or arbitration proceeding, or reported any incidents, which resulted in a claim to a former carrier? ☒ Yes ☐ No

If Yes, please complete a claim information form for each (see pages 17-18)

***Application for Claims-Made Professional Liability Insurance***

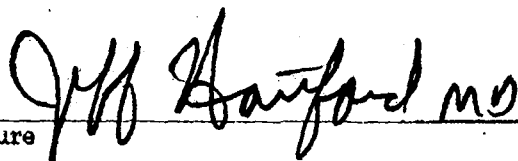
The undersigned declares that to the best of his/her knowledge the statements herein are true. Signing of this Application does not bind the undersigned to complete the insurance, but it is agreed that this Application shall be the basis of the contract should a Policy be issued, and that this Application will be attached and become part of such Policy, if issued. Underwriters hereby are authorized to make any investigation and inquiry in connection with this Application, as they deem necessary.

It is warranted that the particulars and statements contained in the Application for the proposed Policy and any materials submitted herewith (which shall be retained on files by Underwriters and which shall be deemed attached hereto, as if physically attached hereto), are the basis for the proposed Policy, and are to be considered as incorporated into and constituting a part of the proposed Policy.

It is agreed that in the event there is any material change to the answers in the questions contained herein prior to the effective date of the Policy, the Applicant will notify Underwriters and, at the sole discretion of Underwriters, any outstanding quotations may be modified or withdrawn.

The undersigned shall cooperate with NAS and Underwriters in all respects in matters pertaining to this insurance and shall provide information, attend hearings and trials, and assist in making settlements, securing and giving evidence, obtaining the attendance of witnesses, and otherwise facilitating the conduct of any proceeding in connection with the subject matter of this insurance, as may be selected by Underwriters.

Signature



Date

5.29.03

**Authorization to Release Information  
For Hospitals/Medical Staffs/Ambulatory Facilities**

As an applicant for professional liability insurance coverage, underwritten by certain Underwriters at Lloyd's of London, I hereby give my consent to NAS Insurance Services, Inc. (NAS), its agents and representatives, to make inquiries to hospitals, medical staffs, ambulatory facilities, health care service plans or other managed care organizations where I have exercised or applied for clinical privileges or memberships.

I grant permission to such hospitals, medical staffs and managed care organizations and their representatives and agents to provide information to NAS, which pertains to those privileges I have exercised and to my fitness and qualifications to exercise such privileges. This includes but is not limited to information relating to the scope of privileges granted, any special limitations imposed on such privileges and any information regarding any disciplinary action taken with respect to such privileges.

I further agree that the organization releasing the information, its representatives, agents and employees shall not incur any liability as a result of furnishing or releasing information pursuant to this authorization even if such information is incomplete or incorrect.

Jeff Hartford MD Jeffrey F. Hartford MD 5.29.03  
Signature Print Name Date  
999 N. Curtis Ste 404 Boile ID 83706  
Street address City State Zip

**Authorization to Release Information**

I authorize the release to NAS Insurance Services, Inc. of information regarding past and pending claims and underwriting matters from my prior professional liability insurance carriers, or from my past and present medical association or society.

I further agree that the organization releasing the information, its agents, servants and employees shall not incur any liability as a result of any information released or furnished pursuant to this authorization including any errors, omissions or mistakes contained in such released information.

Jeff Hartford MD Jeffrey F. Hartford MD 5.29.03  
Signature Print Name Date  
999 N. Curtis Ste 404 Boile ID 83706  
Street address City State Zip



**CLAIM INFORMATION FORM**

Name of Patient:	Gender:	Age:
------------------	---------	------

1. Condition and Diagnosis of Patient prior to treatment and/or surgery:

2. Date(s) and type of treatment and/or surgery rendered by you:

3. Condition of patient subsequent to treatment and/or surgery by you

4. Nature of Allegations:

5. Was a lawsuit ever filed against you? ☐ Yes ☐ No Case No. \_\_\_\_\_

6. Was it served? ☐ Yes ☐ No Date. \_\_\_\_\_

7. Name of Insurer Claim reported to (if any): \_\_\_\_\_

8. Are you represented by an attorney? ☐ Yes ☐ No

If Yes, name of attorney & law firm: \_\_\_\_\_

9. Present Status of Claim/Incident. Pending \_\_\_\_\_ Closed \_\_\_\_\_ In Suit \_\_\_\_\_

10. If Closed, Total Damages Paid: \$ \_\_\_\_\_ Total Expenses Paid: \$ \_\_\_\_\_

11. If Pending, Is plaintiff demanding a settlement amount? ☐ Yes ☐ No

How much? \$ \_\_\_\_\_

Have you offered a settlement amount? ☐ Yes ☐ No

How much? \$ \_\_\_\_\_

Legal Expenses to Date: \$ \_\_\_\_\_

1. Names of other doctors and hospitals involved, if any:

---

2. Names of all defendants employed and/or supervised by you, if any:

---

3. If case tried to a plaintiff verdict, give explanation, including amounts and dates:

---

**PLEASE COMPLETE A CLAIM INFORMATION FORM FOR EACH PROFESSIONAL LIABILITY CLAIM, SUIT, AND ARBITRATION PROCEEDING, PAST OR PENDING, IN WHICH YOU HAVE BEEN INVOLVED DIRECTLY OR INDIRECTLY. MAKE ADDITIONAL COPIES AS NECESSARY.**



07/02

Serviced By.

**NAS Insurance Services, Inc.**  
Lloyd's Correspondent

Page 17 of 17

Professional Liability Insurance-  
Physicians & Surgeons  
© 2002 NAS Insurance Services, Inc.

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**JEFFREY F. HARTFORD, M.D.**

*Board Certified in Family Practice*

999 N. Curtis Rd.  
Suite 404  
Boise, Idaho 83706

(208) 367-3055  
(208) 367-6622 FAX

#1. My license to practice medicine was suspended for 6 months September 1996 to March 1997 for violating a stipulation I had signed with the Board of Medicine agreeing to abstain from drugs and alcohol.

#3. St. Alphonsus did not renew my staff privileges for one year following suspended medical license. I now have full staff privileges at St. Als hospital.

#7. In July 1996 a claim was settled out of court in the death of an infant with necrotizing enterocolitis for failure to diagnose. My ex-partner and I split responsibility 50/50 and my part of the settlement was \$50,000.

#10 I received inpatient drug and alcohol treatment for 3 months at Springbrook in Roseburg OR. in August 1998. At this time, my malpractice insurance refused to renew my contract with them. I have since signed with a new malpractice company.

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T-239 P.021/021 F-762

**Jeffrey F. Hartford, M.D.**

*Board Certified in Family Practice*

999 N. Curtis Rd.  
Suite 404  
Boise, Idaho 83706  
(208) 367-3055  
(208) 367-6622 FAX

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OCT 27 2006

J. DAVID NAWATZKY, Clerk  
By C. WOODSON  
DEPUTY

Eric S. Rossman, ISB #4573  
Erica S. Phillips, ISB #6009  
ROSSMAN LAW GROUP, PLLC  
737 N. 7<sup>th</sup> Street  
Boise, Idaho 83702  
Telephone: (208) 331-2030  
Facsimile: (208) 342-2170

Attorneys for Plaintiffs

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

H. RAY HARRISON and JULIE  
HARRISON, husband and wife, ,

Plaintiffs,

-vs-

CERTAIN UNDERWRITERS AT LLOYD'S,  
LONDON SUBSCRIBING TO POLICY NO.  
20056 ISSUED TO JEFFREY HARTFORD,  
M.D. EFFECTIVE FROM JUNE 1, 2004 TO  
JUNE 1, 2005 WITH AN RETROACTIVE  
EFFECTIVE DATE OF JUNE 1, 2003; NAS  
INSURANCE SERVICES INC., a California  
corporation,

Defendants.

CASE NO. CV PI 0615687

FIRST AMENDED COMPLAINT  
AND DEMAND FOR JURY TRIAL  
AND DECLARATORY  
JUDGMENT

COME NOW, H. RAY HARRISON and JULIE HARRISON, the above-named  
Plaintiffs, and for cause of action against the Defendants, CERTAIN UNDERWRITERS AT

FIRST AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL  
AND DECLARATORY JUDGMENT - 1

00076

ORIGINAL

LLOYD'S, LONDON SUBSCRIBING TO POLICY NO. 20056 ISSUED TO JEFFREY HARTFORD, M.D. EFFECTIVE FROM JUNE 1, 2004 TO JUNE 1, 2005 WITH AN RETROACTIVE EFFECTIVE DATE OF JUNE 1, 2003, and NAS INSURANCE SERVICES, INC. hereby COMPLAIN AND ALLEGE as follows:

**PARTIES**

1. At all times mentioned herein, Plaintiffs H. Ray Harrison and Julie Anderson were and now are a common law married couple which common law marriage was established prior to January 1, 1996, and residents of Ada County, Idaho. Such common law marriage was formalized on June 5, 2004.

2. Defendant, Certain Underwriters at Lloyd's, London subscribing to policy no. 20056 issued to Jeffrey Hartford, M.D. effective from June 1, 2004 to June 1, 2005 with a retroactive effective date of June 1, 2003 (hereinafter "Lloyd's"), at all times herein mentioned have been, and presently are licensed by the Idaho Department of Insurance.

3. Defendant NAS Insurance Services, Inc. (hereinafter "NAS"), at all times herein mentioned has been, and presently is, a California corporation doing business in the State of Idaho, and an authorized Correspondent for Lloyd's.

4. In August of 2006, Dr. Jeffery Hartford executed an assignment of his causes of action against Lloyd's and NAS to Plaintiffs in this matter.

**JURISDICTION AND VENUE**

5. The Court has jurisdiction in this matter pursuant to Idaho Code § 1-705.

6. Venue is proper, pursuant to Idaho Code § 5-404 because Plaintiffs' residence is in Ada County and the acts and omissions complained of occurred in Ada County.

**GENERAL ALLEGATIONS**

7. On November 15, 2003, Plaintiff H. Ray Harrison ("Mr. Harrison") was admitted to Saint Alphonsus Regional Medical Center's ("SARMC") emergency room.

8. Mr. Harrison was seen in the emergency room by D. Lee Binnion, M.D.

9. Dr. Binnion spoke with Dr. Jeffrey Hartford ("Dr. Hartford") who was the admitting physician for Mountain States Medical, employer of Mr. Harrison's regular physician.

10. Dr. Hartford admitted Mr. Harrison to SARMC.

11. Dr. Hartford assumed responsibility for Mr. Harrison's care as the attending physician.

12. Over the next week, Mr. Harrison's condition steadily deteriorated as he became less and less responsive to outside stimuli. On November 22, 2003, Dr. Hartford requested a neurological consult by Dr. Martha Cline. Dr. Cline diagnosed Mr. Harrison with Central Pontine Myelinolysis (CPM) occurring in the setting of severe hyponatremia with subsequent correction.

13. That same day, Dr. Michael Minas assumed care from Dr. Hartford as Mr. Harrison's attending physician and, upon request of Mr. Harrison's family, transferred Mr. Harrison to the SARMC intensive care unit.

14. Mr. Harrison suffers from severe and permanent neurological injury which requires care and assistance in all aspects of daily living.

15. At the time of Dr. Hartford's treatment of Mr. Harrison, Dr. Hartford was the owner of a Physicians and Surgeons Professional Liability Policy issued as Policy Number 200056 (hereinafter "the policy") by Lloyd's. A true and correct copy of this policy is attached hereto as Exhibit "A."

16. The Correspondent on the policy was NAS, and all claims were to be submitted to NAS.

17. The policy was a "claims-made" policy under which coverage was limited to events occurring on or after the retroactive date of the policy and first reported by Dr. Hartford to Lloyd's through NAS prior to termination of the policy or within any policy period or additional reporting period applicable to Dr. Hartford.

18. The policy was effective June 1, 2003, to June 1, 2004.

19. The policy limits were \$1,000,000.00 per claim.

20. The policy entered into between Dr. Hartford and Lloyd's contains no exclusions for the type of care rendered to Mr. Harrison by Dr. Hartford.

21. Prior to June 1, 2004, NAS received notice of Dr. Hartford's claim for coverage arising from his treatment of Mr. Harrison.

22. On March 2, 2004, Mr. Harrison filed a Medical Malpractice Pre-Litigation Screening Panel application, naming Dr. Hartford as a defendant.

23. The Pre-lit complaint alleged medical negligence and breach of duty by Dr. Hartford in his treatment of Mr. Harrison.

24. On April 28, 2004, Plaintiffs filed suit in the Fourth Judicial District of the State of Idaho.



25. In this Complaint, Plaintiffs alleged that Dr. Hartford was negligent in his treatment of Mr. Harrison and committed negligent and/or intentional infliction of emotional distress.

26. A panel of the Idaho State Board of Medicine held a hearing on the Pre-litigation complaint on July 7, 2004, and issued its report and recommendation on July 20, 2004.

27. The panel concluded that Dr. Hartford had been negligent in his treatment of Mr. Harrison and recommended settlement of Mr. Harrison's claims prior to trial.

28. On August 27, 2004, Lloyd's notified Dr. Hartford that it was voiding the policy between itself and Dr. Hartford.

29. The stated basis for voiding the policy was a violation of provisions of the Second Amended Stipulation and Order entered into by the Idaho State Board of Medicine and Dr. Hartford.

30. Neither Lloyd's nor NAS refunded any premiums paid by Dr. Hartford for the policy.

31. On or about August 16, 2006, Plaintiffs reached a settlement with Dr. Hartford for their claims against him in the sum of \$1,000,000.00.

32. This settlement included an assignment of any and all of Dr. Hartford's claims against Lloyd's and/or NAS resulting from the denial of coverage for claims asserted by Plaintiffs.

**COUNT ONE**

***(Breach of Contract)***

33. Plaintiffs hereby reallege the allegations contained in Paragraphs 1 through 32 set forth above, and incorporate the same herein by reference.

34. The insurance policy issued by Lloyd's to Dr. Hartford constitutes a valid, binding, and enforceable contract of insurance between Lloyd's and Dr. Hartford.

35. Dr. Hartford paid all premiums due, submitted all proofs of loss required, and performed all other obligations and conditions required under the contract of insurance.

36. Lloyd's refusal to pay the claims submitted by Dr. Hartford according to the terms of the policy constitutes a substantial and material breach of the contract.

37. As a direct and proximate result of Lloyd's breach of contract, Dr. Hartford has suffered damages in an amount exceeding \$1,000,000.00 to be proven with certainty at trial.

38. Plaintiffs are entitled to recover their attorney fees and costs incurred in prosecuting this action pursuant to Idaho Code §§ 41-1839, 12-120(3) and 12-121.

**COUNT TWO**

***(Breach of the Implied Covenant of Good Faith and Fair Dealing)***

39. Plaintiffs hereby reallege the allegations contained in Paragraphs 1 through 38 set forth above, and incorporate the same herein by reference.

40. The insurance contract between Dr. Hartford and Lloyd's includes an implied covenant of good faith and fair dealing by both parties.

41. Lloyd's refusal to pay the properly submitted claims by Dr. Hartford substantially nullified a benefit to which Dr. Hartford was entitled under the terms of the contract, and thereby breached the implied covenant of good faith and fair dealing.

42. As a direct and proximate result of Lloyd's breach of the implied covenant of good faith and fair dealing, Dr. Hartford has suffered damages in an amount exceeding \$1,000,000.00 to be proven with certainty at trial.

43. Plaintiffs are entitled to recover their attorney fees and costs incurred in prosecuting this action pursuant to Idaho Code §§ 41-1839, 12-120(3) and 12-121.

### **COUNT THREE**

#### ***(Tort of Bad Faith)***

44. Plaintiffs hereby reallege the allegations contained in Paragraphs 1 through 43 set forth above, and incorporate the same herein by reference.

45. In handling Dr. Hartford's claim, Lloyd's has acted in tortious bad faith by negligently, intentionally, and unreasonably denying payment on the claim and, in the process, has harmed Dr. Hartford in such a way not fully compensable at contract.

46. As a direct and proximate result of the bad faith handling of Dr. Hartford's claim, Dr. Hartford has suffered damages in an amount exceeding \$1,000,000.00 to be proven with certainty at trial.

47. Plaintiffs are entitled to recover their attorney fees and costs incurred in prosecuting this action pursuant to Idaho Code §§ 41-1839, 12-120(3) and 12-121.

48. Lloyd's actions as alleged herein constitute intentional, reckless, willful acts in gross deviation of reasonable standard of conduct.

49. Plaintiffs hereby reserve this paragraph for a claim of punitive damages pursuant to Idaho Code § 6-1604.

#### **COUNT FOUR**

##### ***(Request for Declaratory Relief)***

50. Plaintiffs hereby reallege the allegations contained in Paragraphs 1 through 49 set forth above, and incorporate the same herein by reference.

51. An actual, justiciable controversy exists between Dr. Hartford and Lloyd's as a consequence of Lloyd's refusal to pay Dr. Hartford's claims under the terms of the insurance policy. A declaration by this court of the parties' respective rights, duties and obligations regarding the litigation will resolve the controversy.

52. Neither Lloyd's nor Dr. Hartford has sought any previous adjudication of their respective rights under the insurance policy regarding the litigation.

53. There is no provision in the express language of the insurance policy that excludes Dr. Hartford's claims for coverage for the type of medical treatment provided to Mr. Harrison.

54. Lloyd's attempt to void the policy has failed by reason of its failure to timely refund premiums paid by Dr. Hartford.

55. As such, Lloyd's refusal to accept the claim is in conflict with the terms of the insurance policy and established law and Plaintiffs request a declaration from this Court that

Lloyd's is obligated to indemnify Dr. Hartford and pay any and all sums owed by Dr. Hartford, by reason of settlement or judgment, to Plaintiffs, resulting from the negligence of Dr. Hartford up to the limits of coverage of the Physicians and Surgeons Professional Liability Policy.

56. Plaintiffs are entitled to recover their attorney fees and costs incurred in prosecuting this action pursuant to Idaho Code §§ 41-1839, 12-120(3) and 12-121.

57. Plaintiffs respectfully request that this court order a speedy hearing upon Plaintiffs' action and advance the action upon the calendar as provided by Idaho Rule of Civil Procedure 57.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs demand judgment and relief as follows:

1. For a declaratory judgment finding that Dr. Hartford is entitled to payment of his claims under the terms of the insurance policy issued by Certain Underwriters at Lloyd's, London;
2. For an award of money damages against Certain Underwriters at Lloyd's, London representing a full and fair amount of compensation for all special, general and consequential losses suffered by Dr. Hartford in an amount to be determined at trial;
3. For Plaintiffs' reasonable attorney fees and costs of suit;
4. For prejudgment interest under each of the losses suffered by Dr. Hartford as provided in Idaho Code § 28-22-104; and
5. For such other and further relief as the Court deems just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiffs demand a trial by jury composed of no less than twelve persons on all issues so triable.

DATED this 23<sup>rd</sup> day of October, 2006.

ROSSMAN LAW GROUP, PLLC

By:



Eric S. Rossman  
Attorneys for Plaintiffs

VERIFICATION

STATE OF IDAHO           )  
                                  ) ss.  
County of Ada            )

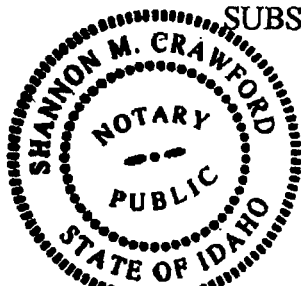
JULIE HARRISON, being first duly sworn, deposes and says:

That I am one of the Plaintiffs in this matter, that I have read the foregoing Complaint, know the contents thereof, and believe the facts therein stated to be true and correct to the best of my knowledge and belief.

DATED this 26<sup>th</sup> day of October, 2006.

Julie Harrison  
Julie Harrison

SUBSCRIBED AND SWORN TO before me this 26<sup>th</sup> day of October 2006.

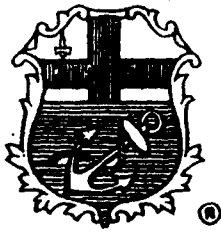


Shannon M. Crawford  
Notary Public for Idaho  
My Commission Expires: 3-3-2012

C:\Documents and Settings\All Users\Documents\Work\Harrison, Raylv. Lloyds of London\Pleadings\COMPLAINT.doc

# EXHIBIT "A"





# Lloyd's, London

**This Insurance** is effected with certain Underwriters at Lloyd's, London (not incorporated).

**This Certificate** is issued in accordance with the limited authorization granted to the Correspondent by certain Underwriters at Lloyd's, London whose names and the proportions underwritten by them can be ascertained from the office of said Correspondent (such Underwriters being hereinafter called "Underwriters") and in consideration of the premium specified herein, Underwriters do hereby bind themselves each for his own part, and not one for another, their heirs, executors and administrators.

**The Assured** is requested to read this certificate, and if not correct, return it immediately to the Correspondent for appropriate alteration.

In the event of a claim under this certificate, please notify the following Correspondent:

**NAS**  
**Insurance Services, inc.**

16633 VENTURA BLVD • SUITE 500 • ENCINO, CA 91436

JH 3

00088

## CERTIFICATE PROVISIONS

1. **Signature Required.** This certificate shall not be valid unless signed by the Correspondent on the attached Declaration Page.
2. **Correspondent Not Insurer.** The Correspondent is not an Insurer hereunder and neither is nor shall be liable for any loss or claim whatsoever. The Insurers hereunder are those individual Underwriters at Lloyd's, London whose names can be ascertained as hereinbefore set forth.
3. **Cancellation.** If this certificate provides for cancellation and this certificate is cancelled after the inception date earned premium must be paid for the time the insurance has been in force.
4. **Service of Suit.** It is agreed that in the event of the failure of Underwriters to pay any amount claimed to be due hereunder, Underwriters, at the request of any person or entity insured hereunder, will submit to the jurisdiction of any court of competent jurisdiction within the United States. Nothing in this Clause constitutes or should be deemed to constitute a waiver of Underwriters' right to commence an action in any court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another court, as permitted by the laws of the United States or of any state, territory, or district in the United States. It is further agreed that service of process in such suit may be made upon the firm or person named on the attached Declaration Page and that in such suit instituted against any one of them upon this Policy, Underwriters will abide by the final decision of such court or of any appellate court in the event of an appeal.

The above-named party is authorized and directed to accept service on behalf of Underwriters in any such suit upon the request of any person or entity to enter a general appearance on behalf of Underwriters in the event such a suit shall be instituted.

Further, pursuant to the applicable statute of any state, territory or district of the United States, Underwriters shall designate the Superintendent, Commissioner or Director of Insurance or other officer specified for the purpose in the statute or any successor in office, as Underwriters' true and lawful attorney, upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of any person or entity insured hereunder or any beneficiary hereunder arising out of this Policy, and hereby designate the firm or person named on the attached Declaration Page as the party to whom such officer is authorized to mail such process.

5. **Assignment.** This certificate shall not be assigned either in whole or in part without the written consent of the Correspondent endorsed hereon.
6. **Attached Conditions Incorporated.** This certificate is made and accepted subject to all the provisions, conditions and warranties set forth herein, attached, or endorsed, all of which are to be considered as incorporated herein.
7. **Short Rate Cancellation.** If the attached provisions provide for cancellation, the table below will be used to calculate the short rate proportion of the premium when applicable under the terms of cancellation.

**Short Rate Cancellation Table For Term of One Year**

Days Insurance in Force	Per Cent of One Year Premium	Days Insurance in Force	Per Cent of One Year Premium	Days Insurance in Force	Per Cent of One Year Premium	Days Insurance in Force	Per Cent of One Year Premium
1	5%	66 - 69	29%	154 - 156	53%	256 - 260	77%
2	6	70 - 73	30	157 - 160	54	261 - 264	78
3 - 4	7	74 - 76	31	161 - 164	55	265 - 269	79
5 - 6	8	77 - 80	32	165 - 167	56	270 - 273 (9 mos.)	80
7 - 8	9	81 - 83	33	168 - 171	57	274 - 278	81
9 - 10	10	84 - 87	34	172 - 175	58	279 - 282	82
11 - 12	11	88 - 91 (3 mos.)	35	176 - 178	59	283 - 287	83
13 - 14	12	92 - 94	36	179 - 182 (6 mos.)	60	288 - 291	84
15 - 16	13	95 - 98	37	183 - 187	61	292 - 296	85
17 - 18	14	99 - 102	38	188 - 191	62	297 - 301	86
19 - 20	15	103 - 105	39	192 - 196	63	302 - 305 (10 mos.)	87
21 - 22	16	106 - 109	40	197 - 200	64	306 - 310	88
23 - 25	17	110 - 113	41	201 - 205	65	311 - 314	89
26 - 29	18	114 - 116	42	206 - 209	66	315 - 319	90
30 - 32 (1 mo.)	19	117 - 120	43	210 - 214 (7 mos.)	67	320 - 323	91
33 - 36	20	121 - 124 (4 mos.)	44	215 - 218	68	324 - 328	92
37 - 40	21	125 - 127	45	219 - 223	69	329 - 332	93
41 - 43	22	128 - 131	46	224 - 228	70	333 - 337 (11 mos.)	94
44 - 47	23	132 - 135	47	229 - 232	71	338 - 342	95
48 - 51	24	136 - 138	48	233 - 237	72	343 - 346	96
52 - 54	25	139 - 142	49	238 - 241	73	347 - 351	97
55 - 58	26	143 - 146	50	242 - 246 (8 mos.)	74	352 - 355	98
59 - 62 (2 mos.)	27	147 - 149	51	247 - 250	75	356 - 360	99
63 - 65	28	150 - 153 (5 mos.)	52	251 - 255	76	361 - 365 (12 mos.)	100

Rules applicable to insurance with terms less than or more than one year:

- A. If insurance has been in force for one year or less, apply the short rate table for annual insurance to the full annual premium determined as for insurance written for a term of one year.
- B. If insurance has been in force for more than one year:
  1. Determine full annual premium as for insurance written for a term of one year.
  2. Deduct such premium from the full insurance premium, and on the remainder calculate the pro rata earned premium on the basis of the ratio of the length of time beyond one year the insurance has been in force to the length of time beyond one year for which the policy was originally written.
  3. Add premium produced in accordance with items (1) and (2) to obtain earned premium during full period insurance has been in force.



P.O. Box 58689 - Birmingham, AL 35258-9689  
(205) 870-7790 Phone - (205) 879-3739 Fax

## INDICATION

ATTN: Karyn Richcreek  
AGENCY: Marsh Affinity Group Service-Boise

FAX: (208) 338-6485  
INDICATION EXP DATE: 5 Days

Dear Karyn,

**WE ARE PLEASED TO OFFER THE FOLLOWING INDICATION; PLEASE NOTE THAT THIS INDICATION IS BASED ON COVERAGES LISTED BELOW. AS THE REPRESENTATIVE OF THE INSURED, IT IS INCUMBENT UPON YOU TO REVIEW THE TERMS OF THIS INDICATION CAREFULLY, AS THE COVERAGES, TERMS AND CONDITIONS OF THE INDICATION MAY BE DIFFERENT THAN THOSE REQUESTED. CRC INSURANCE SERVICES, INC., DISCLAIMS ANY RESPONSIBILITY FOR YOUR FAILURE TO RECONCILE THE ORIGINAL SUBMISSION WITH COVERAGES LISTED WITHIN THIS INDICATION. THIS COVERAGE MAY NOT BE BOUND WITHOUT A FULLY EXECUTED BROKERAGE AGREEMENT.**

The terms of our quote are as follows:

Insured Name: Jeffrey F Hartford, MD

Carrier: Lloyds of London

Coverage: Professional Liability

Term: 6/1/2004 to 6/1/2005

Retroactive: 6/1/2003

Limit: \$1,000,000 Per Claim  
\$3,000,000 Annual Aggregate

Deductible: \$7,500 Per Claim

Terms & Conditions: Premium is due upon receipt of invoice.  
AGENT IS RESPONSIBLE FOR FILING ALL SURPLUS LINES TAXES, FILINGS AND FEES.  
Written request to bind is required.  
This is a claims-made policy, and all claims reported must occur after the effective date of the policy. This policy specifically excludes any pending claims or any known to the insured prior to the inception date of this policy.

Defense in addition to the limits of the liability is available for an additional premium of \$7,768  
Extended Reporting Options: One Year - 200% of Annual Premium  
Five Years - 500% of Annual Premium

Subject to: The Surplus Line Form being completed within 15 days of binding.

NOTE: If insured is located outside your resident state, we must receive a copy of your non-resident license prior to binding.

**Endorsements:**

- E03 Surgical and Surgical Assisting Exclusion
- E05 Emergency Medicine Exclusion.
- E07 Diagnostic Radiology Exclusion.
- E12 Procedure Exclusion Endorsement
  - 1. Prenatal Services.
  - 2. Claims arising out of services provided for or on clinical trials.
  - 3. Redux (aka Dexeduramine)
  - 4. The use, administration, or prescription of amphetamines.
  - 5. The drug combination commonly called "phen-fen" (lisdexamine aka Phentermine and Pondimin, aka Fenfluramine, Fluramine).
  - 6. The use, administration, or prescription of Human Chorionic Gonadotropin (HCG) in the treatment of obesity or weight control.
  - 7. Non prescription Ephedrine, any non prescription containing Ephedrine, Pseudo-Ephedrine or Ephedrine
    - Alkaloids, or Ephedrine distributed under any other name or in any other form including but not limited to Ma Huang,
    - Ephedra, Ephedra, Sinica, Ephedra Sinensis, Ephedra Intermedia, Ephedra Riquetiana,
    - Epitonia, Country Mallow,
    - Mormon Tea, Brigham Tea, Squaw Tea, Desert Tea, or Teamasters Tea.
- E28 Exclusion of Coverage for Non-Physician Insured.
- 1. Eric Namus, P.A. (he must maintain his own insurance).
- E37 Nuclear Exclusion
- E38 War/Civil Exclusion
- E40 Locum Tenens Endorsement
- E48 Medical Director of Nursing Home Exclusion
- E52 Sexual Abuse Exclusion Endorsement
- E57 Minimum Earned Premium Endorsement

Premium:	\$38,840.00
Policy Fee	\$250.00
State Tax	\$1,074.98
Stamping Fee:	\$194.20
Total	<u>\$40,359.18</u>

AGAIN, KEEP IN MIND THAT THE COVERAGES OFFERED IN THIS INDICATION MAY DIFFER FROM THAT REQUESTED IN THE APPLICATION. FAILURE TO PROVIDE THE REQUESTED COVERAGE SHALL IMPOSE NO LIABILITY ON CRC INSURANCE SERVICES, INC. OR ITS COMPANIES.

Thank you for giving us the opportunity to work on your business.

Quoted By: *George Bonnick*

Fax: 205-879-3739

May 26, 2004

Submission #: 2314679 Jeffrey F Hartford, MD

Agency Response: ☐ Yes, please bind as per INDICATION, effective: \_\_\_\_\_  
(complete and fax back)

Signed by: \_\_\_\_\_

Date: \_\_\_\_\_


Item I. Service of Suit:

Mendes & Mount, LLP  
725 South Figueroa Street, 19<sup>th</sup> Floor  
Los Angeles, CA 90017-5419

Dated June 30, 2003

NAS INSURANCE SERVICES, INC.

By:



Correspondent

**ENDORSEMENT  
SURGICAL AND SURGICAL ASSISTING EXCLUSION**

Neither defense nor indemnity insurance coverage is available under this policy for claims, civil lawsuits, arbitrations, legal proceedings, incidents, accidents or events resulting from the performance of surgery or assisting at surgery by the insured, unless specifically endorsed onto the policy by Underwriters.

For the purpose of this Exclusion, surgery is defined as cutting procedures (except simple repair of lacerations, and excision of lesions limited to the skin and immediate subcutaneous tissue), the practice of anesthesiology, and/or orthopedics.

This Exclusion shall apply only to surgery or surgical assisting upon patients by the Insured on or after the effective date of this Endorsement.

Policy No: 200056

Name: Jeffrey F. Hartford, M.D.

Effective: June 1, 2003

Policy Effective Date: June 1, 2003      Expiration: June 1, 2004

Endorsement No. E03 (02)

**ENDORSEMENT**  
**EMERGENCY MEDICINE/EMERGENCY ROOM PRACTICE EXCLUSION**

Neither defense nor indemnity insurance coverage is available under this policy for claims, civil lawsuits, arbitrations, legal proceedings, incidents, accidents or events resulting from the practice of emergency medicine by the Insured as a contractor to or employed physician at any outpatient facility or hospital designated as or offering emergency medical services.

This Exclusion shall apply only to emergency medical services delivered to patients by the Insured on or after the effective date of this Endorsement.

Policy No: 200056

Name: Jeffrey F. Hartford, M.D.

Effective: June 1, 2003

Policy Effective Date: June 1, 2003      Expiration: June 1, 2004

Endorsement No. E05 (02)

**ENDORSEMENT  
DIAGNOSTIC RADIOLOGY EXCLUSION**

Neither defense nor indemnity insurance coverage is available under this policy for claims, civil lawsuits, arbitrations, legal proceedings, incidents, accidents or events resulting from the performance of myelography, angiography, intravenous pyelogram, or any other diagnostic radiologic procedure by the Insured.

This Exclusion shall apply only to diagnostic radiologic procedures delivered to patients by the Insured on or after the effective date of this Endorsement.

Policy No: 200056

Name: Jeffrey F. Hartford, M.D.

Effective: June 1, 2003

Policy Effective Date: June 1, 2003    Expiration: June 1, 2004

Endorsement No. E07 (02)



## ENDORSEMENT PROCEDURE EXCLUSION

Neither defense nor indemnity insurance coverage is available under this policy for claims, civil lawsuits, arbitrations, legal proceedings, incidents, accidents, or events resulting from the performance of the following procedures by the insured.

The insured's medical professional liability policy is changed to add the following under

### Exclusions:

#### 1. No Defense or Payment of Damages.

5. Any liability sought or imposed for damage or injury resulting from:

- 16) Prenatal Services.
- 17) Claims arising out of services provided for or on clinical trials.
- 18) Redux (aka Defenduraxin).
- 19) The use, administration, or prescription of amphetamines.
- 20) The drug combination commonly called "pica-for" (lonamin aka Phentermine and Pondimin, aka Fenfluramine, Fluoxetine).
- 21) The use, administration, or prescription of Human Chorionic Gonadotropin (HCG) in the treatment of obesity or weight control.
- 22) Non prescription Ephedrine, any non prescription containing Ephedrine, Pseudo-Ephedrine or Ephedrine Alkaloids, or Ephedrine distributed under any other name or in any other form including but not limited to Ma Huang, Ephedra, Ephedra Sinensis, Ephedra Intermedia, Ephedra Equisetina, Epitonic, Country Mallow, Mormon Tea, Brigham Tea, Squaw Tea, Desert Tea, or Teasmartek Tea.

Failure to comply with these restrictions will render this policy null and void.

I understand that this Endorsement limits my medical professional liability coverage, and that my coverage is contingent on my compliance with the terms of this Endorsement.

Jeff Hartford M.D.  
Signature

6.6.03  
Date

Policy No: 200056

Name: Jeffrey F. Hartford, MD

Effective: June 1, 2003

Policy Effective Date: June 1, 2003 Expiration: June 1, 2004

Endorsement No. E12 (02)

105-1 200 d 108-1

FROM MAY 21 11 20-20-NHC

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JH 11

00096

**ENDORSEMENT  
EXCLUSION OF COVERAGE FOR ADDITIONAL INSURED**

Underwriters agree with the Insured that coverage under this policy for the following individual employed by the Insured are excluded from coverage under this policy as an Additional Insured as outlined in the Definitions of this policy.

- 1. Eric Manus, P.A.**

Policy No: 200056

Name: Jeffrey F. Hartford, M.D.

Effective: June 1, 2003

Policy Effective Date: June 1, 2003      Expiration: June 1, 2004

Endorsement No. E28 (02)

## ENDORSEMENT

U.S.A.

### NUCLEAR INCIDENT EXCLUSION CLAUSE-LIABILITY-DIRECT (BROAD)

*For attachment to insurances of the following classifications in the U.S.A., its Territories and Possessions, Puerto Rico and Canal Zone:*

*Owners, Landlords and Tenants Liability, Contractual Liability, Elevator Liability, Owners or Contractors (including railroad) Protective Liability, Manufacturers and Contractors Liability, Product Liability, Professional and Malpractice Liability, Storekeepers Liability, Garage Liability, Automobile Liability (including Massachusetts Motor Vehicle or Garage Liability),*

*not being insurances or the classifications to which the Nuclear Incident Exclusion Clause-Liability-Direct (Limited) applies.*

This policy\* does not apply:

- I. Under any Liability Coverage, to injury, sickness, disease, death or destruction
  - (a) with respect to which an insured under the policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; or
  - (b) resulting from the hazardous properties of nuclear material and with respect to which (1) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (2) the insured is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.
- II. Under any Medical Payments Coverage, or under any Supplementary Payments Provision relating to immediate medical or surgical relief, to expenses incurred with respect to bodily injury, sickness, disease or death resulting from the hazardous properties of nuclear material and arising out of the operation of a nuclear facility by any person or organization.
- III. Under any Liability Coverage, to injury, sickness, disease, death or destruction resulting from the hazardous properties of nuclear material, if
  - (a) the nuclear material (1) is at any nuclear facility owned by, or operated by or on behalf of, an insured or (2) has been discharged or dispersed therefrom;
  - (b) the nuclear material is contained in spent fuel or waste at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of an insured; or
  - (c) the injury, sickness, disease, death or destruction arises out of the furnishing by an insured of services, materials, parts or equipment in connection with the planning, construction maintenance, operation or use of any nuclear facility, but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion (c) applies only to injury to or destruction of property at such nuclear facility.

## WAR AND CIVIL WAR EXCLUSION ENDORSEMENT

Notwithstanding any provision to the contrary within this insurance or any endorsement thereto it is agreed that this insurance excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any of the following regardless of any other cause or event contributing concurrently or in any other sequence to the loss;

1. war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power; or

2. any act of terrorism.

For the purpose of this endorsement an act of terrorism means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear.

This endorsement also excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to 1 and/or 2 above.

If the Underwriters allege that by reason of this exclusion, any loss, damage, cost or expense is not covered by this insurance the burden of proving the contrary shall be upon the Assured. In the event any portion of this endorsement is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

08/10/01 NMA2918

Policy No: 200056

Name: Jeffrey F. Hartford, M.D.

Effective: June 1, 2003

Policy Effective Date: June 1, 2003      Expiration: June 1, 2004

Endorsement No. E38 (02)

**ENDORSEMENT  
LOCUM TENENS EXCLUSION**

Neither defense nor indemnity insurance coverage is available under this policy for claims, civil lawsuits, arbitrations, legal proceedings, incidents, accidents, or events resulting from the medical services rendered as locum tenens by the Insured.

The Insured's medical professional liability policy is changed to add the following under

Exclusions.

1. No Defense or Payment of Damages.

W. Any liability sought or imposed for any medical or professional services rendered by the named insured while acting as locum tenens.

For the purposes of this Endorsement, locum tenens is defined as follows: A physician who temporarily carries on the practice of an absent doctor, providing the same services as the physician.

Failure to comply with these restrictions will render this policy null and void.

Policy No: 200056

Name: Jeffrey F. Hartford, M.D.

Effective: June 1, 2003

Policy Effective Date: June 1, 2003      Expiration: June 1, 2004

Endorsement No. E40 (02)

**ENDORSEMENT  
MEDICAL DIRECTOR OF NURSING HOME EXCLUSION**

**There is no coverage under this policy for claims, civil lawsuits, arbitrations, legal proceedings, incidents, accidents or events resulting from the actions of the Insured when acting as a Medical Director of a Nursing Home or Adult Day Care Facility. For the purposes of this endorsement, a nursing home is defined as an independent living facility, assisted living facility, intermediate care facility, skilled nursing facility, Alzheimer's care facility, Continuing Care Retirement community or any other like residential facility.**

Policy No: 200056

Name: Jeffrey F. Hartford, M.D.

Effective: June 1, 2003

Policy Effective Date: June 1, 2003      Expiration: June 1, 2004

Endorsement No. E48 (02)

## SEXUAL ABUSE EXCLUSION

In consideration of the premium charged, it is agreed that the policy MPL 2002 page 15 of 16 is hereby amended as follows:

Exclusions, Section (2) Defense Only – No Payment of Damages item (B.) is removed in its entirety.

It is further agreed that the following exclusion is added to the policy:

X. No coverage shall apply under this policy to any claims involving the use of excessive influence or power on any patient, or the actual or alleged inappropriate physical contact or contact that is deemed by or alleged by the plaintiff to be sexual or in any way unwelcomed.

Policy No: 200056

Name: Jeffrey F. Hartford, M.D.

Effective: June 1, 2003

Policy Effective Date: June 1, 2003      Expiration: June 1, 2004

Endorsement No. E52 (03)

JH 17 00102

**ENDORSEMENT  
STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**

In consideration of the premium charged the attached Stipulated Settlement and Disciplinary Order, dated January 29, 1999, is hereby made part of the policy. Any failure to adhere to the terms and conditions of the Order will be in violation of the policy and will render the coverage void.

Policy No: 200056

Name: Jeffrey F. Hartford, M.D.

Effective: June 1, 2003

Policy Effective Date: June 1, 2003      Expiration: June 1, 2004

Endorsement No. E55 (03)

JH 18

**00103**



Jean R. Uranga  
URANGA & URANGA  
714 North 5th Street  
P.O. Box 1678  
Boise, Idaho 83701  
Telephone: (208) 342-8931  
Facsimile: (208) 384-5686

Attorneys for the Board

IDAHO BOARD OF MEDICINE  
I certify that this document is a true  
and correct copy of the original on  
file in this office.

*Mary Russell Associate Dir*  
Name/Title

5/09/03  
Date

BEFORE THE BOARD OF PROFESSIONAL DISCIPLINE OF  
THE IDAHO STATE BOARD OF MEDICINE

In the Matter of:

JEFFREY F. HARTFORD, M.D.,  
License No. M-5269,

Respondent.

Case No. 95-033

SECOND AMENDED  
STIPULATION AND ORDER

COMES NOW the Board of Professional Discipline of the Idaho State Board of Medicine, hereinafter referred to as the Board, and Jeffrey F. Hartford, M.D., hereinafter referred to as Respondent, and stipulate and agree as follows:

I

Respondent is the holder of an Idaho license to practice medicine and surgery, License No. M-5269, issued by the Idaho State Board of Medicine on September 2, 1987. Said license is subject to the provisions of Title 54, Chapter 18, Idaho Code, commonly known as the Medical Practice Act.

II

On December 18, 1995, Respondent entered into a Stipulation and Order with the Board to address the Board's concerns regarding personal use of alcohol and controlled substances by Respondent.

The Stipulation and Order established certain terms and conditions and Respondent violated those conditions. Based upon those violations, an Order of Temporary Suspension was entered by the Board on September 16, 1996.

On March 21, 1997, Respondent entered into an Amended Stipulation and Order with the Board to address the additional concerns regarding personal use of alcohol and controlled substances by Respondent. The Stipulation and Order also established certain terms and conditions and Respondent again violated those conditions. Based upon those further violations, another Order of Temporary Suspension was issued by the Board on September 25, 1998. A disciplinary Complaint was also filed October 19, 1998.

### III

The acts and practices of Respondent, as alleged in Paragraph II above, constitute violations of the Medical Practice Act in that Respondent has practiced medicine in violation of a voluntary restriction or term of probation pursuant to this Chapter, in violation of Idaho Code §54-1814(19).

### IV

The Board believes it has sufficient evidence to support disciplinary action based upon these allegations, but rather than pursuing a formal investigation and hearing, the parties are voluntarily entering into this Second Amended Stipulation and Order for the purpose of informally responding to the concerns of the Board and for the purpose of providing an acceptable procedure for dealing with the alleged problems.

### V

Respondent knowingly and voluntarily waives any right to a

formal hearing, to present evidence, to cross-examine witnesses, to reconsideration and appeal and to other rights accorded him pursuant to the Administrative Procedure Act and the Medical Practice Act which he might otherwise possess with respect to this Second Amended Stipulation.

## VI

In order to respond to these allegations, Respondent hereby stipulates and agrees that:

- (a) Respondent's license to practice medicine and surgery in the State of Idaho shall remain suspended for six (6) months from his discharge from Springbrook Northwest, which occurred on November 13, 1998.
- (b) Respondent shall abstain completely from the personal use or possession of drugs, except those prescribed, administered, or dispensed to him by another so authorized by law who has full knowledge of Respondent's history of chemical dependency.
- (c) Respondent shall abstain completely from the use of alcohol.
- (d) Respondent shall submit to random urine screenings for drugs on a weekly basis or as otherwise directed by the IMA Peer Assistance Program. The IMA Peer Assistance Program shall immediately inform the Board of any positive screening results.
- (e) The Board retains the right to require, and Respondent agrees to submit, blood or urine specimens for analysis upon request and without prior notice.
- (f) Respondent shall execute a contract with the IMA Peer

Assistance Program and shall comply fully with the terms and conditions of that contract and shall authorize the IMA to provide the Board with regular status reports and all records of the program.

- (g) Respondent shall have a monitoring physician, approved by the Board, who shall monitor him and provide the Board with reports on the doctor's progress and status. Respondent is to ensure that said reports are forwarded to the Board on a quarterly basis. In the event that the designated monitoring physician becomes unable or unwilling to serve in this capacity, Respondent must immediately so notify the Board in writing, and make arrangements acceptable to the Board for another physician to monitor his progress and status as soon as practicable.
- (h) Respondent shall provide all employers and the Chief of Staff at each hospital where he has, applies for, or obtains privileges, with a copy of this Second Amended Stipulation and Order.
- (i) Respondent shall obey all federal, state and local laws, and all rules governing the practice of medicine in Idaho.
- (j) In the event that Respondent should leave Idaho for three (3) continuous months, or reside or practice outside the State, Respondent must notify the Board in writing of the dates of departure and return. Periods of time spent outside Idaho will not apply to the reduction of this period under the Second Amended Stipulation and Order.

## VII

The above described terms, limitations and conditions may be amended or terminated in writing at any time upon the agreement of both parties. However, this Second Amended Stipulation and Order shall remain in force for a minimum of five (5) years prior to any request for termination of this Second Amended Stipulation and Order.

## VIII

If, in the discretion of the Idaho State Board of Medicine; Respondent appears to have violated or breached any terms or conditions of this Second Amended Stipulation and Order, the Idaho State Board of Medicine reserves the right to institute formal disciplinary proceedings for any and all possible violations or breaches, including, but not limited to, alleged violations of the laws of Idaho occurring before the effective date of this Second Amended Stipulation and Order. If Respondent tests positive on any of the drug screenings or if the Board receives any evidence of relapse, Respondent's license shall be summarily suspended pending any further proceedings and shall be permanently revoked if the charges are proven.

## IX

Any action initiated by the Board based on alleged violations of this Second Amended Stipulation and Order shall comply with the Administrative Procedure Act, Title 67, Chapter 52, Idaho Code, the Medical Practice Act and the Rules of Practice and Procedure of the Board.

## X

Respondent agrees to execute the Release, attached hereto as

Exhibit A, releasing the Idaho State Board of Medicine, the Idaho State Board of Discipline, their members, employees, agents, officers, representatives, attorneys, consultants and witnesses, jointly and severally, from any and all liability arising from their participation or involvement in the Board's investigation of Respondent and in the prosecution of this disciplinary proceeding.

XI

This Second Amended Stipulation and Order shall be considered a public record as that term is used in the Idaho Code, and will be reported to the National Practitioner Data Bank and the Federation of State Medical Boards and to any licensing agencies who request information. This Second Amended Stipulation and Order shall become effective upon the last date of signature below.

XII

Respondent further agrees to execute the Release, attached hereto as Exhibit B, authorizing any person or entity having information relevant to Respondent's compliance with the provisions of this Second Amended Stipulation and Order to release such information to the Board.

XIII

The parties acknowledge that Respondent has been represented by attorneys of his choice and the terms and legal significance of this Second Amended Stipulation and Order and the effect which it has was fully explained. Respondent acknowledges that he fully understands this Second Amended Stipulation and Order and its legal effect and that he is signing the same freely and voluntarily, and that neither party has any reason to believe that the other did not understand fully the terms and the effects of this Second Amended

stipulation and Order or that he did not freely and voluntarily execute this Second Amended Stipulation and Order.

DATED This 27 day of January, 1999.

BOARD OF PROFESSIONAL DISCIPLINE

Jane Bennett Munro MD  
JANE BENNETT-MUNRO, M.D.  
Chair

DATED This 28 day of 1999 Jan, 1999.

Jeffrey F Hartford  
JEFFREY F. HARTFORD, M.D.

ORDER

Pursuant to Idaho Code §§54-1806(A)(6)(e) and 54-1806(A)(10), the Board hereby accepts the terms and conditions of the foregoing Second Amended Stipulation and it is hereby ordered that Respondent comply with said terms and conditions. Based upon the foregoing, further formal proceedings will be waived.

DATED This 29 day of January, 1999.

BOARD OF PROFESSIONAL DISCIPLINE

Jane Bennett Munro MD  
JANE BENNETT-MUNRO, M.D.  
Chair



# NAS

## Insurance Services, inc.

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LIC. #0677191

### PHYSICIANS AND SURGEONS PROFESSIONAL LIABILITY POLICY (Other than Standard)

#### NOTICE

#### THIS IS A "CLAIMS-MADE" POLICY

Coverage under this policy is provided on a "claims-made" basis, that is, insurance is limited to matters described in this policy which:

1. Arise out of events described in the policy occurring on or after the retroactive date in the applicable policy Declarations issued to the Insured, and
2. Are first reported by the Insured to Underwriters either prior to the termination of this policy or within any policy period or additional reporting period applicable to the Insured.

Please review this policy carefully and discuss the coverage with an attorney, broker, insurance advisor or risk management consultant.

#### NOTICE

IN THE EVENT THAT YOU ARE INVOLVED IN AN ACCIDENT OR INCIDENT  
WHICH MAY GIVE RISE TO A CLAIM, LAWSUIT OR LEGAL OR  
ADMINISTRATIVE PROCEEDING, IMMEDIATELY CONTACT THE CLAIMS  
DEPARTMENT AT NAS INSURANCE SERVICES, INC. AT (818) 382-2030.



**PHYSICIANS AND SURGEONS PROFESSIONAL LIABILITY POLICY**  
(for other than Standard)

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## NOTICE

Except as may otherwise be provided herein, the coverage of this policy is limited generally to liability for only those claims that are first made against the Insured while the policy is in force. Please review the policy carefully and discuss the coverage with an attorney, broker, insurance advisor or risk management consultant.

## CLAIMS MADE AND REPORTED INSURANCE POLICY

Certain Underwriters at Lloyds of London provide the insurance described in this insurance policy. The term "Insured" is used to describe the Insured person or entity, who is either named in the policy Declarations or Endorsement or is an individual described specifically in this policy. Terms, which appear in boldface, are defined in the "Definitions" section, page five (5).

This policy provides professional liability coverage to individual physicians and certain employed additional Non-Physician Healthcare Professionals for claims involving direct patient treatment when the claim arises out of an occurrence which happened during the policy period, and the claim is initially asserted against the Insured during the policy period, and the claim is first reported to Underwriters in writing during the policy period. Coverage is available only for claims or suits arising out of events, which occur after the "retroactive date" specified in a policy Declarations or an Endorsement, which applies to this policy. The policy will be in effect from 12:01 AM on the effective date until 12:01 AM on the day the policy expires or is terminated by the Insured or Underwriters.

This policy may describe coverage which is not included in the Insured's insurance. The policy Declarations or Endorsements applicable to this policy will specify the effective date and identify the specific coverage included in the Insured's policy. The limits of liability are specified either in the policy Declarations or in an Endorsement.

Coverage for any claim is contingent upon compliance with all other sections of this policy.

## PERSONS INSURED

Each of the following is an Insured under this policy to the extent set forth below, and share limits with the Named Insured physician on the policy:

1. A physician (the Named Insured);
2. If such physician practices his or her profession as the sole shareholder of a solo medical corporation, the solo medical corporation;
3. Any approved Non-Physician Healthcare Professional employed by such physician, but only while acting within the scope of his or her duties for such physician;
4. Any approved locum tenens, but only while acting within the scope of his or her duties for such physician; and
5. Any other employee of such physician (other than a Non-Physician Healthcare Professional or locum tenens), but only while acting within the scope of his or her duties for such physician.

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## SCOPE OF COVERAGE

Underwriters will defend an Insured under this policy, and pay, on behalf of such Insured, all sums up to the limits of insurance stated on the Declarations or Endorsement that such Insured becomes legally obligated to pay as damages for injury which results from the rendering or failure to render direct patient treatment by:

1. An Insured physician;
2. An approved Non-Physician Healthcare Professional employed by an Insured physician who has been specifically identified by name in a policy Declarations or Endorsement, but only if the occurrence takes place while such Non-Physician Healthcare Professional is acting within the scope of his or her duties for the physician;
3. An approved locum tenens who has been specifically identified by name in a policy Endorsement, but only if the occurrence takes place while such locum tenens is acting within the scope of his or her duties for the physician; and
4. Any other employee of such physician (other than a Non-Physician Healthcare Professional or locum tenens), but only while acting within the scope of employment for such physician.

Underwriters' obligation to pay reasonable Costs, Charges and Expenses is not subject to the specified limits of liability. Underwriters' obligations to make any other payment on an Insured's behalf are subject to the specified limits of liability.

1. Underwriters' obligation to make any payment on an Insured's behalf is subject to the Insured's timely payment of the applicable deductible.
2. In such matters, Underwriters will also pay the costs and prejudgment interest imposed upon an Insured by law, post-judgment interest on a judgment against an Insured up to the time Underwriters makes payment, subject to the limits of liability, and premiums on appeal bonds, for bond values up to the Underwriters' limits of liability.

## DEFINITIONS

The following terms, whenever they are used in this policy, will be defined as follows:

1. **Application:**
  - A. The Application for this policy or any policy of which this policy is a renewal; and
  - B. Any materials submitted therewith.
  - C. These items shall be retained on file by Underwriters and shall be deemed attached hereto, as if physically attached hereto.
2. **Additional Insured:** Non-physician employees of the Named Insured who are not required to be licensed or certified to provide any services for which they are employed, but only with respect to healthcare services they perform within the authorized scope of their employment by the Insured.

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3. **Additional Named Insured:** Persons or entities that must be specifically identified by name in a policy Declaration or Endorsement in order to be covered under this policy. This category includes the Named Insured's solo professional corporation and persons practicing or licensed in any of the following categories:
- A. Acupuncturists
  - B. Psychologists;
  - C. Counselors;
  - D. Social Workers;
  - E. Nurses;
  - F. Nurse Practitioners;
  - G. Nurse Anesthetists;
  - H. Nurse Midwives;
  - I. Perfusionists;
  - J. Physicians Assistants;
  - K. Scrub Nurses;
  - L. Surgical Assistants;
  - M. Technicians or Therapists who are required to be licensed or certified;
  - N. Optometrists;
  - O. Opticians; or in any other position requiring licensure or certification
4. **Bodily Injury:** Physical injury, including death, physical sickness or physical disease.
5. **Claim:** Any written demand for damages or other relief against any of the Insureds by or on behalf of a patient or said patients legal heirs.
6. **Costs, Charges and Expenses:** Reasonable and necessary legal fees and expenses incurred in defense of any claim and cost of attachment or similar bonds, but shall not include:
- A. Salaries, wages, overhead or any expenses associated with the Named Insured's medical practice and/or solo professional corporation; or
  - B. Any amounts incurred in defense of any other claim for which any other insurer has a duty to defend.
7. **Declaration(s) or Endorsement(s):** A written document labeled as a Declaration or Endorsement issued by Underwriters to the Insured, applicable to this policy. The policy Declaration(s) or Endorsement(s) is a part of the policy.

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8. **Insured(s):** An Insured individual or entity under this policy who is identified as a "Named Insured" or an "Additional Named Insured" or an "Additional Insured" in a policy Declarations or Endorsement (s).
9. **Locum Tenens:** A medical physician who substitutes for another physician for a finite period of time. The Locum Tenens and the length of the replacement must be pre-approved by Underwriters. Locum Tenens coverage is only available for physicians.
10. **Loss:** Damages, including medical, economic and general compensatory damages; judgments (including pre-judgment and post-judgment interest awarded against an Insured on that part of any judgment paid or to be paid by Underwriters); settlements; **Costs, Charges and Expenses**, including attorney fees; but shall not include civil or criminal fines or penalties imposed by law or any other matters deemed uninsurable under the law pursuant to which this policy shall be construed.
11. **Named Insured:** The physician named in Item A of the Declarations.
12. **Non-Physician Healthcare Professionals:** Non-physician employees or contractors of the Named Insured who may be required to be licensed or certified to provide the services for which they are employed, but do not have an active medical license in the jurisdiction where they are employed.
13. **Physician:** A medical doctor or osteopath licensed to practice medicine in the applicable jurisdiction;
14. **Policy:** The written insurance agreement herein issued to an Insured upon Application and approval by Underwriters, and all policy Declarations and Endorsements, which apply to the Insured.
15. **Policy Period:** This policy does not apply to the Insured until a policy Declaration is issued by Underwriters, describing the specific period of time this policy shall be in effect. That period of time is a policy period, and commences at 12:01 A.M. on the effective date of the policy declaration. The policy period continues until 12:01 A.M. on the day the policy expires, is terminated, or is canceled, whichever occurs first. A policy period may be no longer than one "policy year", which is a twelve-month period.
16. **Professional Services:** Includes but is not limited to direct patient treatment and other medical, surgical, x-ray or nursing services, or treatment.
17. **Reporting Endorsement:** A written Endorsement issued to a physician, which permits the physician to report claims otherwise covered by certain coverages of this policy after the end of the policy period. The reporting Endorsement shows the physician as the Named Insured, the policy number, the retroactive date, the expiration or cancellation date, the applicable coverages, the premium and the reporting period covered by the Endorsement.
18. **Reporting Period:** The period of time specified in a reporting Endorsement during which claims arising from occurrences during the policy period that are covered by the applicable coverages can be reported to Underwriters. All dates shown are 12:01 a.m. at the address shown in Item A. of the Declarations.
19. **Retroactive Date:** The Retroactive Date is specified by Underwriters in a declaration or Endorsement issued to the Insured.
20. **Solo Professional Corporation:** The Named Insured's solo professional corporation wherein the professional corporation has a single shareholder, the Named Insured under this policy, who is engaged in the delivery of health care services.

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21. **Suit:** A civil proceeding in which damages because of bodily injury to which this insurance applies are alleged. Suit includes an arbitration proceeding alleging such damage to which the **Insured** must submit or does submit with the Underwriters' written consent.

### **GENERAL CONDITIONS**

These general conditions describe and limit the amount and availability of insurance provided under this policy, except in those instances where the policy itself makes different provisions applicable to specified coverage. In order for insurance described in this policy to apply to the **Insured**, said **Insured** must comply with each of the conditions described below. Underwriters will not be obligated to provide coverage if the **Insured** fails to comply with any condition.

#### **1. LIMITS OF LIABILITY**

- A. The amount of insurance coverage available for indemnity payments for covered claims shall be as described in the **Declarations** or **Endorsement (s)**.
- B. Limits of liability specified in a **Declarations** or **Endorsement** of this policy apply for all covered claims under this policy, and shall not be multiplied or expanded regardless of the number of **Insureds** or persons entitled to insurance coverage under this policy.
- C. The amount of insurance available from Underwriters for covered claims arising from a single act, omission, or event, or from related acts, omissions, or events, shall be limited to the sum described in a **Declarations** or **Endorsement** under the heading of "Per Claim" limit, and this amount shall not be multiplied or expanded, regardless of the number of injuries, claimants, or litigants, or the number of claims, lawsuits, arbitrations, or legal or administrative proceedings which result.
- D. For covered claims which arise from different or unrelated acts, omissions, or events which are first reported to Underwriters within the same policy year, the insurance available from Underwriters shall be limited to the total sum described in the **Declarations** or **Endorsement** under the heading of "Aggregate" limit, and shall not be multiplied or expanded, regardless of the number of injuries, claimants, or litigants, or the number of claims, lawsuits, arbitrations, or legal proceedings which result.
- E. The "Per Claim" and "Aggregate" limits of liability under this policy are not cumulative, even if related acts, omissions, accidents, incidents or events span more than one policy year.

#### **2. EFFECTS OF SUBSEQUENT DECLARATIONS OR ENDORSEMENTS**

Successive policy **Declarations** or **Endorsements** may be issued to the **Insured** by Underwriters, upon renewal or at certain other times. The policy **Declarations** or **Endorsement** applicable to such **Insured's** coverage when a claim is reported to Underwriters shall be the **Declarations** or **Endorsement** most recently issued prior to the **Insured's** report of the claim.

#### **3. DUTIES OF INSURED IN EVENT OF A CLAIM**

When the **Insured** first becomes aware of any act, omission, event, incident, or accident which may give rise to a claim against such **Insured**, or if the **Insured** obtains knowledge or information from any source that such a matter is contemplated, likely, or has been initiated, said **Insured** must promptly give Underwriters written notice of the claim, providing such information as is known to the **Insured**, as well as any information subsequently becoming known to the **Insured** or requested by Underwriters. The **Insured** must promptly provide Underwriters with written notice of the particulars concerning the matter, including information regarding the identity of persons and entities involved, the time, place, and circumstances of the events or occurrences, and names and addresses of injured

parties and witnesses. Such Insured must also promptly forward every demand, notice of intention to file suit, summons, subpoena, or other legal process, which the Insured or his representatives receive. A claim under this policy shall not be considered made or reported unless and until the Insured provides Underwriters with written notice.

#### **4. SETTLEMENT, CONSENT AND DEFENSE**

##### **A. SETTLEMENT**

- 1) No settlement shall be made or negotiated, and no Costs, Charges and Expenses shall be incurred without Underwriters' consent, such consent not to unreasonably withheld. Underwriters shall have the right to investigate and settle any claim; however, no settlement shall be made without the consent of the Named Insured, such consent not to be unreasonably withheld.
- 2) Underwriters will not settle any claim against an Insured physician, an approved healthcare professional or an approved locum tenens involving direct patient care without the consent of the Named Insured listed on the policy. As all employed and contracted personnel share limits with the Named Insured, and all settlements are reported on behalf of the Named Insured, such Insured's consent is required for settlement.

All settlements will be reported to the National Practitioner Data Bank and applicable state agencies in compliance with Federal and State laws. While all settlement will be made on behalf of the Named Insured physician, all defendant parties will be reported to the National Practitioner Data Bank (NPDB), and any applicable state agency.

##### **B. CONSENT**

- 1) Underwriters may from time to time recommend settlement of a claim. This recommendation will be based on careful consideration of all circumstances surrounding the Insured's potential liability. Such Insured agrees to give careful consideration to this recommendation.
- 2) If Underwriters recommend a settlement and such Insured disagrees, and elects to contest or continue any legal proceedings, then Underwriters' liability will be limited to 50% of the amount in excess of the amount for which the claim could have been settled, including Costs, Charges and Expenses. Underwriters will state their recommended settlement figure in writing.

##### **C. DEFENSE**

- 1) With respect to any claim which falls, or is claimed to fall, in whole or in part within the insurance coverage of this policy, Underwriters shall have the sole and exclusive right to investigate, negotiate, evaluate, control, and direct the defense of such matter, including the right to appoint legal counsel behalf of the Insured, as may be permitted or limited by law. With respect to any covered claim, legal counsel selected by the Insured shall not be permitted to intervene or substitute into the defense of the matter without the prior consent and written approval of Underwriters.
- 2) Underwriters shall have the right and duty to defend any claim and such right and duty shall exist even if any of the covered allegations are groundless false or fraudulent. Costs, Charge and Expenses incurred by Underwriters shall be paid by Underwriters as a part of, and not in addition to, Underwriters' Limit of Liability set forth in the Declarations.

- 3) Underwriters shall have no obligation to pay any Loss, including Costs, Charges and Expenses or to defend or continue to defend any claim after the limit of liability as set forth in the Declarations has been exhausted by payment of Loss.

#### **5. TERRITORY**

This policy applies to claims arising out of treatment rendered, or not rendered and brought in the United States of America.

#### **6. ASSISTANCE AND COOPERATION**

The Insured is required to cooperate with Underwriters in all respects in matters pertaining to this insurance and, upon request of Underwriters, shall provide information, attend hearings and trials, and assist in making settlements, securing and giving evidence, giving statement and depositions where requested, obtaining the attendance of witnesses, and otherwise facilitating the conduct of any proceeding in connection with the subject matter of this insurance, including a review of the claim or lawsuit by a medical review and advisory committee or similar committee of a professional society or organization as may be selected by Underwriters. Such Insured must not voluntarily make any payment, assume any obligation, or incur any expense with respect to a covered claim except with prior written consent of Underwriters.

#### **7. PREMIUMS GENERALLY**

The insurance available under the policy is provided in return for, and expressly conditioned upon, timely payment by the Insured of a premium established by Underwriters. All premiums for this policy shall be computed solely by Underwriters in accordance with Underwriters' procedures and rating plans applicable to this insurance. In the event of a change in the Insured's professional practice or activities which, in the opinion of Underwriters, materially alters the risk or affects the hazard insured against, as a condition of continued coverage Underwriters shall have the right to impose and obtain additional premiums consistent with Underwriters rating plans applicable to such practices or activities. The Insured is required to make and retain records of such information as is necessary for premium computation according to procedures and rating plans of Underwriters, and must make copies of such records available to Underwriters at such time as Underwriters may reasonably request.

#### **8. PREMIUM PAYMENTS — AUTOMATIC TERMINATION**

All premiums for this policy are payable annually as established by Underwriters. Unless the time for payment is extended by Underwriters in writing, the Insured will be deemed in default if the premium is not paid on or before its due date, and the policy will terminate automatically, without notice, as of 12:01 a.m. Standard Time at the expiration of the period through which the premium has been paid. It is the Insured's duty to ensure that premiums are promptly paid to Underwriters, regardless of whether premium statements are received from Underwriters.

#### **9. OTHER INSURANCE**

If the Insured has other valid and collectible insurance for acts, omissions, events, incidents, or accidents covered under this policy, or any other source for indemnification or reimbursement for damages, settlement, legal fees, costs, or expenses as a result of such matters, insurance under this policy shall not apply until the limits of such other insurance or other sources have been exhausted.

If any individual or professional corporation identified under this policy as an "Additional Insured" or is also covered under a separate Underwriters policy, any exclusions of coverage under such separate Underwriters policy shall automatically apply to this policy, and no coverage shall be available when liability is imposed, or sought to be imposed, upon such individual or professional corporation based upon acts or omissions excluded under this policy or such separate Underwriters policy.

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## 10. SUBROGRATION AND REIMBURSEMENT FOR THIRD PARTY LIABILITY

- A. Subrogation — In the event of any payment by Underwriters under this policy, Underwriters shall be subrogated to the Insured's rights of recovery against any person or organization and the Insured must promptly execute and deliver whatever documents, instruments, or papers are necessary and appropriate to effectuate said subrogation, and to do whatever else is necessary to secure such rights for Underwriters. The Insured must do nothing to adversely influence or prejudice the subrogation rights of Underwriters.
- B. Reimbursement for Third Party Liability — In the event the Insured asserts any claim against a third party for damages, indemnification, contribution, or reimbursement for events for which sums were paid under this policy on the Insured's behalf, Underwriters will have a lien against such sums recovered by the Insured to the extent that sums were paid by Underwriters, and the Insured is required to promptly execute and deliver any documents, instruments, or papers necessary to effectuate such lien, and to do whatever else is necessary to secure such lien rights of Underwriters, doing nothing to prejudice Underwriters' lien rights.

## 11. REPRESENTATIONS

- A. By acceptance of this policy, the Insured acknowledges that the statements made in the Application for insurance are true and correct, that said Insured and his employees, agents, or representatives have not withheld or failed to disclose pertinent information, and that the Insured has given careful consideration to the statements and information provided. Said Insured further acknowledges that such statements are material representations, and that any policy issued by Underwriters is issued in reliance upon the truth and accuracy of such statements. The Insured further agrees that this policy embodies all agreements, representations and commitments by Underwriters, or any of its employees, agents, representatives or counsel regarding the subject of insurance coverage.
- B. The Insured agrees to promptly report to Underwriters any material changes in the information previously reported to Underwriters in connection with this insurance. Further, the Insured agrees that any material changes in professional practice or activities may be a basis for imposition of an additional premium, at the election of Underwriters, which is consistent with its rating plans, as well as imposition of other terms, conditions, or limitations of insurance coverage, including cancellation if Underwriters determines the changed circumstances affect the hazard insured against.

## 12. WAIVER

Notice to any representative of Underwriters, or knowledge possessed by any representative or person employed by or related to Underwriters shall not constitute a waiver or change of any Part of this policy, or preclude Underwriters from asserting any right under the terms of this policy, nor shall the terms of this policy be deemed to be waived or changed by virtue of any representation or written or oral statement by Underwriters or their representatives, except as such waiver or change may be described by Underwriters in an Endorsement or policy Declarations issued to the Insured.

## 13. ASSIGNMENTS AND ACTIONS AGAINST UNDERWRITERS

No action shall lie against Underwriters unless, as a condition precedent thereto, the Insureds shall have fully complied with all the terms of this policy, nor until the amount of the Insureds' obligation to pay shall have been fully and finally determined either by judgment against them or by written agreement between them, the claimant and Underwriters. Nothing contained herein shall give any person or organization any right to join Underwriters as a party to any claim against the Insureds to determine their liability, nor shall Underwriters be impleaded by the Insureds or their legal representative in any claim. Assignment of interest under this policy shall not bind Underwriters unless their consent is endorsed hereon.

#### 14. TERMINATION

- A. Insurance coverage under this policy ends upon cancellation, upon the end of the policy period specified in the policy Declarations or Endorsement issued to the Insured, at the end of the reporting period specified in the reporting Endorsement issued to such Insured, or upon automatic termination of the policy relating to nonpayment of premium or relocation of the designated principal place of practice, as described in the General Conditions, whichever occurs first.
- B. If any individual or solo professional corporation identified under this policy as an "Additional Insured" or "Non-Physician Healthcare Professional" is no longer employed or associated with the Insured, and fails to obtain insurance coverage equivalent to the insurance afforded herein for the period the individual was employed or associated with the Insured, or if said Insured fails to obtain such coverage on behalf of such individual, insurance from Underwriters otherwise available to such person, or to the Insured under this policy for acts or omissions of such person shall automatically terminate except for those claims first reported to Underwriters during the period of employment or association.

#### 15. CANCELLATION

- A. Insurance coverage under this policy for the Insured is automatically canceled, upon death, permanent disability, or a judicial determination of incompetency.
- B. In addition to the grounds for cancellation described in this policy, and except as otherwise limited by applicable law, insurance coverage may be cancelled by the Insured or Underwriters, without cause, and without any cause of action accruing against the canceling party, upon written notice to the other specifying the date following which the cancellation shall be effective, in which case the date specified shall constitute end of the policy period; provided however, that if Underwriters cancel for any reason other than non-payment of premium, at least 30 days advance written notice of cancellation shall be mailed to the Insured at the Insured's address as stated in the policy Declarations.
- C. Should the Insured cancel this policy prior to the state expiration date listed on the Declarations, a minimum 25% earned premium surcharge will be added prior to the calculation of the return premium.

#### 16. AVAILABILITY AND TERMS OF REPORTING ENDORSEMENT

If the Insured is identified by Underwriters under the heading of "Named Insured" in a policy Declarations or Endorsement, the Insured, and the Insured's estate or legal representative, shall have the right, upon written request and following payment of a premium to be determined by Underwriters at that time, to have issued reporting Endorsement (s) providing an additional reporting period, unless the termination of the Insured's coverage was for non-payment of premium, in which case the advance payment of the pro-rata premium through the date of cancellation must also be made to Underwriters before reporting Endorsement (s) shall be issued. Insurance coverage under a reporting Endorsement may be modified by terms and conditions established by Underwriters as set forth in such reporting Endorsement (s). However, the amount of insurance under reporting Endorsement (s) shall be the same as the limits of liability in the policy Declarations or Endorsement (s) issued to the Insured by Underwriters prior to the termination of the policy. In this event, it is further provided that the Insured shall be entitled to issuance of reporting Endorsement (s) by Underwriters, but only upon such terms and conditions and payment of additional premiums as may be determined by Underwriters.

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## **17. INSPECTION AND AUDIT**

Underwriters and their representatives shall be permitted to inspect the Insured's professional office premises, property and operations at any time. Neither Underwriters' right to make such inspections nor the making thereof, nor any report thereon shall constitute an undertaking by Underwriters that such property or operations are safe. Underwriters may request and undertake a reasonable examination and audit the Insured's books and records insofar as they relate to the subject matter of this insurance.

## **18. ARBITRATION**

Any dispute between the Insured and Underwriters arising out of, in connection with or relating to this policy shall be submitted to binding arbitration in accordance with the rules of the American Arbitration Association ("AAA") then in effect, except that the arbitration panel shall consist of one arbitrator selected by the Insured, one arbitrator selected by Underwriters and a third independent arbitrator selected by the first two arbitrators.

## **19. BANKRUPTCY OF INSURED**

Insolvency or bankruptcy on the part of the Insured will not release Underwriters from the payment of damages for injury sustained or loss occasioned during the term of said policy.

## **20. ENTIRE AGREEMENT**

By acceptance of this policy, the Insured agrees that this policy embodies all agreements existing between them and Underwriters or any of their agents relating to this insurance. Notice to any agent or knowledge possessed by any agent or other person acting on behalf of Underwriters shall not effect a waiver or a change in any part of this policy or estop Underwriters from asserting any right under the terms of this policy, nor shall the terms be deemed waived or changed except by written Endorsement issued by Underwriters issued to form part of this policy.

## **21. PRINCIPAL PLACE OF PRACTICE**

The Insured agrees that insurance coverage under this policy is available only if the Insured maintains the principal place of practice in the location identified by the Insured in his Application for insurance by Underwriters, and that relocation by the Insured to another principal place of practice without notification to and agreement by Underwriters as evidenced by Underwriters' issuance of a policy Declarations or Endorsement shall constitute an automatic termination of insurance coverage under this policy.

## **22. NON-ASSESSABILITY**

This policy is not assessable.

## **EXCLUSIONS**

### **1. No Defense or Payment of Damages**

There are certain claims involving direct patient treatment that this policy does not cover. Underwriters will neither defend any Insured nor pay any damages because of a claim, which arises out of or results from any of the following:

- A. If not reported by the Insured to Underwriters during the policy period.

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- B. Any liability sought or imposed upon the Insured because of the Insured's status as a partner, representative, associate, or joint venturer with any person or entity, or as a result of the Insured's status as a member, shareholder, officer, director, trustee, agent, or representative of a corporation (other than the Named Insured's solo professional corporation) or unincorporated association.
- C. Any liability sought or imposed upon the Insured for acts or omissions of physicians, professional corporations, or persons associated with or employed by the Insured other than nurses, medical assistants, and persons not required to be licensed or certified to perform any duties for which they are employed, unless the Insured has given written notice of such employment or association to Underwriters within 10 days after such employment or association commences, and Underwriters have issued a Declarations or Endorsement identifying those persons under the heading of "Non-Physician Healthcare Professionals."
- D. Any liability sought or imposed upon the Insured as a result of acts or omissions during any employment by the United States Government or any other governmental or public entity.
- E. Any liability sought or imposed upon the Insured as a result of the use, administration or prescription of any drug, pharmaceutical or medical device disapproved or not yet approved by the United States Food and Drug Administration for treatment of human beings, unless the Insured has requested approval from Underwriters for the use, administration or prescription of such drug, pharmaceutical or medical device and Underwriters have given such approval in writing.
- F. Any liability sought or imposed upon the Insured as a result of an occurrence happening while the license to practice medicine or the certification of the individual responsible for providing direct patient treatment is not in effect.
- G. Any liability sought or imposed upon the Insured as a result of an occurrence involving the dispensing of controlled substances during the course of direct patient treatment which happened while the license or registration to dispense such controlled substances issued to the individual responsible for providing direct patient treatment is not in effect.
- H. Any liability sought or imposed upon the Insured as a result of the Insured's activity as an owner, shareholder, partner, investor, joint venturer, officer, director, administrator, or medical director of a hospital, clinic, ambulatory care center, sanitarium, skilled nursing facility, surgery center, convalescent hospital or home, hospice, laboratory, free-standing treatment facility, pathology laboratory, radiology facility, emergency or urgent care center, health maintenance organization, health care service plan, preferred provider organization, or any similar health care entity or delivery system, health care supply or support organization, or any other business organization or operation, whether or not medically related, which is not identified as a "Named Insured" or an "Additional Insured" in a Declarations or Endorsement. This exclusion shall not apply to the extent the Insured's liability arises out of the Insured's rendering or failing to render direct patient care as outlined under Scope of Coverage, in the event of the Insured's personal and direct participation in the events for which damages or liability is sought or imposed.
- I. Any liability sought or imposed because of the Insured's written or oral agreement to hold harmless, indemnify, or otherwise assume another's obligation or liability, if liability or the amount of damages sought or imposed upon the Insured is greater than that which would exist in the absence of such an agreement.
- J. Any liability sought or imposed, or sought to be imposed, as a result of intentional, willful, criminal, malicious or fraudulent acts.
- K. Any liability sought or imposed as a result of advertising, broadcasting, or telecasting activities.

- L. Any liability sought or imposed for the Insured's acts or omissions while the Insured's principal place of practice is other than that identified by the Insured in prior notification to Underwriters.
- M. Any liability sought or imposed upon the Insured as a result of a claim for return or nonpayment of fees or governmental payments for direct patient treatment.
- N. Any liability sought or imposed upon the Insured as a result of any actual or alleged involvement in any antitrust law violations.
- O. Any liability sought or imposed for injury, damage, sickness, disease, or death of any of the Insured's employees, agents, or representatives, arising out of and in the course of such person's employment by the Insured, or under any workers' compensation, unemployment compensation, disability benefits, or similar law relating to employee benefits, welfare, or entitlements.
- P. Any liability sought or imposed upon the Insured as a result of any defect in goods or products developed, manufactured, assembled, sold, handled or distributed by the Insured or others trading under the Insured's name, except that defects in goods and products which are dispensed or administered to patients of the Insured or altered by an Insured in his or her provision of direct medical treatment are not excluded.
- Q. Any liability sought or imposed for property damage to property owned, leased, or rented, in whole or in part, by the Insured, or entrusted to the care, custody, and control of the Insured, or the Insured's employees, agents, or representatives.
- R. Administrative Proceedings

Underwriters will neither defend nor pay sanctions or penalties, which result from any of the following:

- 1) Any disciplinary or administrative proceeding, such as a state medical licensing board review; or
  - 2) A review of the quality of the Insured's care by agencies or entities conducting utilization review for government and private insurance companies.
  - 3) A review of the Insured's billing practices by the Office of the Inspector General of the Department of Health and Human Services, by the United States Department of Justice, by a state agency, by a County, by a County Hospital, by a Hospital of any type, by any medical health plan or provider when taking action which may result in the termination of your right to provide services under any program for the provision of health care services.
- S. Any liability sought or imposed for damage or injury resulting from:
- 1) Surgical proceedings involving the spinal column, including the brain, unless:
    - a. Required by a bonafide emergency requiring immediate intervention; or
    - b. The Insured participates as an assistant surgeon only.
  - 2) Cosmetic Surgery
  - 3) The use of chymopapain.
  - 4) Chelation therapy in the treatment of cardiovascular disease.
  - 5) Refractive keratoplasty procedures, including but not limited to Lasik procedures.

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- 6) Liposuction.
  - 7) The delivery of infants, except in the case of a bonafide emergency.
  - 8) The use of intragastric balloons or similar medical devices in connection with a program directly or indirectly related to weight control or reduction.
  - 9) The practice of medical weight management including surgical weight reduction procedures.
  - 10) Any treatment for sexual dysfunction, including but not limited to surgical alteration procedures.
  - 11) The practice of Telemedicine
  - 12) The practice of the specialty of Emergency Medicine.
  - 13) The use of drug shock therapy.
  - 14) The use of laetrile.
  - 15) The practice of diagnostic radiology, except in the case of a bonafide emergency.
- T. Regardless of when any claim, loss, arbitration, or proceeding is reported to Underwriters, no insurance coverage is afforded to the Insured for acts, omissions, events, accidents, or incidents, which occur prior to the retroactive date.
- U. There is no coverage under this policy for payment of exemplary or punitive damages, civil fines, or assessments.
- V. There is no coverage of any kind for any bodily injury or property damage:
- 1) With respect to which insurance is or can be available to the Insured under a nuclear energy liability policy.
  - 2) Which results from the hazardous properties of nuclear material for which financial protection would be required under the Atomic Energy Act of 1954 (as amended) or for which the Insured would be entitled to indemnity from the United States of America pursuant to the Atomic Energy Act of 1954 (as amended).

**2. Defense Only — No Payment of Damages**

Underwriters will defend an Insured against a claim otherwise covered by this policy, which includes allegations of:

- A. A guarantee of the results of any direct patient treatment.
- B. Sexual relations, sexual abuse, sexual contact, sexual intimacy, sexual battery, or sexual exploitation by an Insured.
- C. An occurrence while any Insured rendering direct patient treatment is under the influence of alcohol, narcotics or hallucinogenic agents, or which results from other substance abuse.

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In consideration of payment of premium, in reliance upon the statements and representations in the Application (s) for insurance and the Declarations made a part hereof, and subject to all the terms of this policy, Underwriters agree with the Named Insured physician as set forth above.

This policy shall not be effective for any purpose unless and until a completed Declarations is issued to the Named Insured physician by Underwriters. Such Declarations shall form a part of this policy.

NAS Insurance Services, Inc.

By:



On behalf of the Underwriters  
providing this insurance.

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**NAS Insurance Services, Inc.**  
 Application for CLAIMS-MADE PROFESSIONAL LIABILITY INSURANCE -- Physicians & Surgeons  
 Underwritten by Certain Underwriters at Lloyd's of London

**IMPORTANT NOTICE:**

You are applying for coverage under a claims-made policy. If your application is accepted by Underwriters, the insurance is limited to matters described in the policy which arise out of events described in the policy occurring on or after the retroactive date in the applicable policy declaration issued to you, AND are first reported by you to Underwriters, either prior to termination of this policy or within any policy period or additional reporting period applicable to you.

**1 PERSONAL INFORMATION**

<u>Jeffrey</u>	<u>Francis</u>	<u>Hartford</u>
First Name	Middle Name	Last Name
<u>Jan. 28, 1958</u>	<u>Cut Bank, MT</u>	<u>Male</u>
Date of Birth (Month/Day/Year)	Place of Birth (City, State, Country)	Male/Female
<u>10035 Highlander</u>	<u>Boise ID 83709</u>	<u>208-362-2946</u>
Home Address		Telephone Number
<u>999 N Curtis Ste 404</u>	<u>Boise</u>	<u>ID 83706</u>
Principal Office Address	State	City
<u>ADA</u>	<u>208-367-3055</u>	<u>208-367-6622</u>
County	Telephone Number	Fax Number
		<u>jhartfordmd@aol.</u>
		E-Mail
<u>Mailing Address (if different from office address)</u>		
<u>516 74 6547</u>	<u>84-1393841</u>	
Social Security Number	or	Tax ID Number
		Federal EIN

**2 REQUESTED COVERAGE EFFECTIVE DATE**

June 1, 2003

Month	Day	Year
-------	-----	------

**3. REQUESTED LIABILITY LIMITS**

Check one: Limit per claim / annual aggregate  
☐ \$500,000 / \$1,500,000 ☐ \$1,000,000 / \$1,000,000 ☒ \$1,000,000 / \$3,000,000

**Deductible Amounts**

Check one.

☒ \$7,500 ☐ \$10,000 ☐ \$25,000 ☐ \$50,000 ☐ \$75,000 ☐ \$100,000

The minimum deductible is \$7,500 for non-surgical specialties, and \$10,000 for surgical specialties. A higher deductible may be applied to the policy at the election of either the applicant or NAS' Underwriting Department.



**Licenses/Board Certification/CME**

**2. ACTIVE LICENSES**

State	License Number	Date Licensed	Expiration Date
Idaho	M5269	5/13/03	6/30/05
State	License Number	Date Licensed	Expiration Date
Idaho	License Number	Date Licensed	Expiration Date
Physician License		Date of Issue	Expiration Date

**5. BOARD CERTIFICATION**

Are you certified by one or more boards of the American Board of Medical Specialties? ☒ Yes ☐ No

Name of Board	Year Originally Certified	Certification Expires	Recertified (Year)
AAP	1989	2003	2003
Name of Board	Year Originally Certified	Certification Expires	Recertified (Year)

If not currently certified, are you scheduled to take the board examination?

☐ Yes ☐ No When? \_\_\_\_\_

If eligible, have you taken the written exam?

☐ Yes ☐ No When? \_\_\_\_\_ Pass/ Fail

Have you ever failed the written exam?

☐ Yes ☒ No # of times \_\_\_\_\_

If eligible, have you taken the oral exam?

☐ Yes ☐ No When? \_\_\_\_\_ Pass/ Fail

Have you ever failed the oral exam?

☐ Yes ☒ No # of times \_\_\_\_\_

If you are no longer eligible to take the board exams, state reason: \_\_\_\_\_

**6. CONTINUING MEDICAL EDUCATION**

How many hours of category 1 CME have you taken in each of the last two years?

124

**Medical Education and Training**

**7. MEDICAL SCHOOL**

School	City	State	Country	From (Month/Year)	To (Month/Year)	Degree
University of Washington	Seattle	WA	USA	1982-1986		MD

8 INTERNSHIP

Family Practice Residency of Idaho Born IN USA  
Hospital \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Country \_\_\_\_\_

7.86 6.87  
From (Month/Year) To (Month/Year)

9 RESIDENCY

Family Practice Residency of Idaho Boise ID USA  
Hospital \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Country \_\_\_\_\_  
Family Practice 7.87 6.89  
Medical Specialty From (Month/Year) To (Month/Year) Residency Completed? ☒ Yes ☐ No

10. ADDITIONAL RESIDENCY

Hospital \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Country \_\_\_\_\_  
Medical Specialty From (Month/Year) To (Month/Year) Residency Completed? ☐ Yes ☐ No

11 FELLOWSHIPS AND ADDITIONAL MEDICAL TRAINING

Hospital or Facility \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Country \_\_\_\_\_  
Type of Training \_\_\_\_\_ From (Month/Year) To (Month/Year)

Hospital or Facility \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Country \_\_\_\_\_  
Type of Training \_\_\_\_\_ From (Month/Year) To (Month/Year)

12. MILITARY

Are you currently active in military service? ☐ Yes ☒ No Branch \_\_\_\_\_ Reserve? ☐ Yes ☐ No

Scope and Practice

13. SPECIALTY

- A. What is your medical or surgical specialty? Family Practice  
B. Do you limit your practice to this specialty? ☒ Yes ☐ No  
C. Do you have a sub-specialty? If Yes, please describe: \_\_\_\_\_

Do you limit your practice to this sub-specialty? ☐ Yes ☐ No

D. If the answer to 13 B and C is No, please describe what medical specialty you practice. \_\_\_\_\_

14. CURRENT PRACTICE LOCATIONS

List all offices where you currently practice. If you practice at more than two locations, list them on your letterhead.

Address/Building #	City	State	Zip
999 N Curtis Ste 404	Boise	ID	83706

15. HOSPITAL AND AMBULATORY SURGERY CENTER PRIVILEGES

List all hospitals and ambulatory surgery centers where you currently have privileges or have applications for privileges pending. Indicate type of privileges and restrictions, if any. If you want NAS to send evidence of coverage (certificate of insurance) to any of these hospitals, please indicate.

Hospital/Facility	City	Type of Privileges	Restrictions	*Certificate to be sent? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
St Alb RMC	Boise	Admitting	NONE	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Intermountain Hospital	Boise	Admitting	NONE	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Sun Health Hospital	Boise	Consulting	NONE	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

\* A certificate of your insurance will be sent only if you request it and if the Underwriting Department approves your application for insurance.

16. TYPE OF PRACTICE

Check the boxes that best describe the type of practice you have?

☒ Solo practice not incorporated      ☐ Solo medical corporation      ☐ Professional association  
☐ Fictitious name entity or "DBA"      ☐ Other \_\_\_\_\_

If you checked any box other than Solo practice not incorporated, list below the name of the entity(ies), your status, and names of associates, shareholders or employed physicians. Use a separate sheet if necessary.

Name of entity (if any) \_\_\_\_\_ Status (partner, shareholder, employee, contractor) \_\_\_\_\_

Names of partners, shareholders, employers or associates \_\_\_\_\_ Names of employed physicians \_\_\_\_\_

Name of entity (if any) \_\_\_\_\_ Status (partner, shareholder, employee, contractor) \_\_\_\_\_

Names of partners, shareholders, employers or associates \_\_\_\_\_ Names of employed physicians \_\_\_\_\_

Separate entity coverage is not available under this program. All entities will share limits with the individual physician.

Attach a sample of your professional, partnership or corporation stationery.

17. OTHER ASSOCIATED PHYSICIANS

Do you practice with other physicians not listed above in Question 16? ☒ Yes ☐ No  
If Yes, list the physician(s) and indicate the nature of your association (e.g. common billing, share offices, share employees, common letterhead). List additional physicians on an additional sheet of paper.

Name of physician(s)	Nature of association
Ashley Davis	Share office space

18. ON-CALL PHYSICIANS

Do all members of your night, weekend, vacation or illness "on-call" referral group carry professional liability insurance? ☒ Yes ☐ No

If No, list names of those who do not: \_\_\_\_\_

19. NON-PHYSICIAN HEALTH CARE PROVIDERS

Indicate if you employ any healthcare professionals in the following categories. List the hours worked per week. Attach a protocol of the services performed and a non-physician Healthcare Provider Application for each employee.

	Total Hours Per Week	Number of Employees
Nurses	30	1
Laboratory Technicians		
Physiotherapists		
X-ray Technicians		
Others (describe)		
Nurse Anesthetists (CRNA)		
Nurse Perfusionist		
Nurse Practitioner		
Physician's Assistant	40	1
Psychologists		
Perioperative Nurses		
Surgical Technicians		
Others (describe)		

20. FACILITY ASSOCIATION

Indicate if you are employed or contracted to provide professional services with any of the following facilities.

☐ Check here if none

- |  |  |
|--|--|
| <input type="checkbox"/> Blood bank                                    | <input checked="" type="checkbox"/> Hospital, psychiatric*     |
| <input type="checkbox"/> Birthing center                               | <input type="checkbox"/> Industrial firm medical care facility |
| <input type="checkbox"/> City, county, state or federal agency         | <input type="checkbox"/> Laboratory                            |
| <input type="checkbox"/> Clinic with bed and board facilities          | <input type="checkbox"/> Nursing home*                         |
| <input type="checkbox"/> Emergency treatment facility (freestanding)*  | <input type="checkbox"/> Sanatorium*                           |
| <input type="checkbox"/> Emergency treatment facility (hospital)*      | <input type="checkbox"/> Urgent care clinic                    |
| <input type="checkbox"/> Freestanding surgical facility                | <input type="checkbox"/> X-ray or imaging facility             |
| <input type="checkbox"/> Hospital (other than member of medical staff) | <input type="checkbox"/> Other health care facility            |
| <input type="checkbox"/> Hospital, convalescent*                       |  |

\* This Program does not provide coverage for physicians who work primarily at these facilities. If you have a written contract with any of the facilities listed above, please attach a copy of the contract to this application.

FACILITY #1 Intermountain Hospital Medical Consultant  
Name Address Type of association  
Admitting/Consulting 4-12 5  
Duties Number of weekly hours Percentage of weekly practice

Is the facility insured for professional liability? ☒ Yes ☐ No  
Does the facility's coverage extend to you? ☒ Yes ☐ No  
Must evidence of your coverage be submitted to the facility? ☒ Yes ☐ No

FACILITY #2 Sun Health Hospital  
Name Address Type of association  
Admitting/Consulting 0-2 1  
Duties Number of weekly hours Percentage of weekly practice

Is the facility insured for professional liability? ☐ Yes ☐ No  
Does the facility's coverage extend to you? ☐ Yes ☐ No  
Must evidence of your coverage be submitted to the facility? ☐ Yes ☐ No

21. PRACTICE ACTIVITY (FULL-TIME/PART-TIME)

A Are you applying for full-time coverage? ☒ Yes ☐ No

B Are you applying for part-time coverage, not more than 30 hours per week, non-surgical practice? ☐ Yes ☐ No

If Yes, please complete the following: Days per week: \_\_\_\_\_ Hours per day (office): \_\_\_\_\_

Patients per week: \_\_\_\_\_ Hours per day (hospital): \_\_\_\_\_

Name of on-call physician: \_\_\_\_\_

Provide a general description of your activities when you are not practicing or for which other professional liability coverage is provided and will not be covered by Underwriters:

C. If you are employed elsewhere for which coverage is provided by the facility, you must still identify the facility in your answer to question 80.

D. Indicate your weekly average practice activity:

	Number/Week
Patients seen in the office (non-surgical)	120
Patients seen in the hospital (non-surgical)	0-1
Patients seen only by paramedical personnel that you employ	40
Number of surgical assists you perform	0-1
Anesthesiologists. Procedures for which you administer anesthesia	0
Pathologists. Procedures you perform without patient contact	0

E. Approximate yearly percentage of medical service provided in the following categories:

Medicaid Care	All Other
HMO/IPA members	Industrial (Workers Comp)
Medicare HMO	Direct pay by patient
MediCal/Medicaid HMO	Private Indemnity Insurance
PPO	Medicare indemnity
	MediCal/Medicaid indemnity
	Other

22. SURGERY/ANESTHESIA (FOR CALIFORNIA APPLICANTS; California Business & Professions Code requires surgeons and other facilities, including physicians' offices, administering certain types of anesthesia to be licensed and accredited)

Do you perform surgery at hospitals or outpatient facilities not licensed or accredited either by the Joint Commission on Accreditation of Health Care Organizations or the American Association for Accreditation of Ambulatory Surgery Facilities, etc.? ☐ Yes ☐ No  
If Yes, provide name of facility(ies) and list procedures performed.

Do you or does anyone else perform surgery in your office using anesthesia, except local anesthesia and/or peripheral nerve blocks, or both? ☐ Yes ☐ No  
If Yes, please describe the procedures and type of anesthesia.

Who administers the anesthesia?

Do you supervise nurse anesthetists (CRNAs)?

☐ Yes ☐ No

If Yes, how many?

Has your office been accredited or licensed for outpatient surgery by a national organization such as the American Association for Accreditation of Ambulatory Surgery Facilities or Accreditation Association for Ambulatory Health Care?

☐ Yes ☒ No

If Yes, please provide name of organization and date accredited/licensed:

A. What means of monitoring are in place preoperatively, during surgery, and postoperatively?  
(Use a separate sheet of paper.)

B. Do you maintain separate insurance for the surgical suite?

☐ Yes ☐ No

If Yes, please provide name of carrier, limits of liability, and expiration date of policy.

#### 23. DELIVERIES

Do you perform deliveries?

☐ Yes ☒ No

If Yes, provide name of the facility(ies), number of deliveries performed, and the name of the Accreditation organization.

#### 24. X-RAYS (BY NON-RADIOLOGISTS)

Do you take and interpret X-Rays in your office?

☐ Yes ☒ No

If Yes, describe type of X-Rays taken and interpreted.

#### 25. PSYCHIATRY

If you plan to currently participate in managed care programs, please respond to the following questions.

Is therapy limited by the managed care organization (length of time, number of sessions)?

☐ Yes ☐ No

If Yes, please describe:

Are type and amount of medications prescribed to enrollees dictated by the health plan?

☐ Yes ☐ No

If Yes, please describe:

Does the plan encourage non-physician psychotherapy versus physician treatment and evaluation?

☐ Yes ☐ No

If Yes, please describe the relationship between non-physician therapists and you regarding care and treatment of enrollees.

#### 26. TELEMEDICINE

Do you practice: ☐ Teleradiology?

☐ Other Telemedicine?

## #7. PROCEDURES

Please check all procedures you perform, and provide estimates of how many you perform per year.

☒ Check here if none.

- ☐ Acupuncture..... #
- ☐ Angiography..... #
- ☐ Angioplasty..... #
- ☐ Aortography..... #
- ☐ Cardio catheterization..... #
- ☐ Contrast media in CNS..... #
- ☐ Coronary angiography..... #
- ☐ Drug shock therapy..... #
- ☐ Hair transplants..... #

- ☐ Intraocular lens implants..... #
- ☐ IVPs..... #
- ☐ Myelography..... #
- ☐ Pacemaker insertions, temporary..... #
- ☐ Pacemaker insertions, permanent..... #
- ☐ Pericocular testing..... #
- ☐ Therapeutic use of radioactive materials..... #
- ☐ Use of laser..... #
- ☐ Use of ablation therapy in treatment of cardiovascular disease..... #

\* This Program does not provide coverage for these procedures.

## 25. SURGICAL PROCEDURES

Please check which surgical procedures you perform and percentage of your total medical practice each represents. Do not include assisting at surgery

☒ Check here if none

	No. Performed Per Year	Percentage Practice/Year
<input type="checkbox"/> Abortions: Type.....		%
<input type="checkbox"/> Anesthesiology.....		%
<input type="checkbox"/> Cardiovascular surgery.....		%
<input type="checkbox"/> Chymopain injections.....		%
<input type="checkbox"/> Colon and rectal surgery.....		%
<input type="checkbox"/> General surgery.....		%
<input type="checkbox"/> Gynecologic surgery (other than abortions).....		%
<input type="checkbox"/> Hand surgery.....		%
<input type="checkbox"/> Head and neck surgery.....		%
<input type="checkbox"/> Laparoscopic cholecystectomy.....		%
<input type="checkbox"/> Other laparoscopic surgery.....		%
(Describe).....		
<input type="checkbox"/> Liposuction.....		%
<input type="checkbox"/> Neurosurgery.....		%
<input type="checkbox"/> Obstetrics.....		%
<input type="checkbox"/> Ophthalmic surgery.....		%
<input type="checkbox"/> Orthopedic surgery (include closed reductions).....		%
<input type="checkbox"/> Orthopedic surgery - total joint replacement.....		%
<input type="checkbox"/> Plastic surgery - cosmetic.....		%
<input type="checkbox"/> Plastic surgery - other.....		%
<input type="checkbox"/> Refractive surgery.....		%
<input type="checkbox"/> Spinal surgery - posterior lumbar fusion.....		%
<input type="checkbox"/> Spinal surgery - other spinal surgery.....		%
<input type="checkbox"/> Surgery intended for weight reduction.....		%
<input type="checkbox"/> Thoracic surgery (other than cardiovascular).....		%
<input type="checkbox"/> Urologic surgery.....		%
<input type="checkbox"/> Vascular surgery.....		%

\* This Program does not provide coverage for these procedures

Note: If your surgical practice will change significantly in the coming year, attach a narrative description of the changes to this application.



29. WEIGHT CONTROL

Do you specialize in weight control practice?

☐ Yes ☒ No

If Yes, describe fully: \_\_\_\_\_

Do you prescribe or dispense medications for weight control purposes?

☒ Yes ☐ No

If Yes, are all drugs approved by FDA? Describe: yes

What percentage of your practice involves weight control? 5 %

30. SEX THERAPY

Do you specialize in, or does a significant portion of your practice include therapy, counseling, or prescription of medications for sexual dysfunction?

☐ Yes ☒ No

If Yes, explain methodology: \_\_\_\_\_

What percentage of your practice involves sexual therapy? 1/2 %

Does any portion of your practice include surgery for sexual dysfunction?

☐ Yes ☒ No

31. EXPERIMENTAL AND INVESTIGATIVE PROCEDURES

Do you use experimental procedures, drugs or therapy in treatment or surgery?

☐ Yes ☒ No

If Yes, describe fully: \_\_\_\_\_

If Yes, do you follow FDA-approved protocols?

☐ Yes ☐ No

What percentage of your practice involves experimental procedures, drugs or therapy in treatment or surgery? \_\_\_\_\_ %

32. MEDICAL PRACTICE ADVERTISEMENTS

Do you advertise your medical practice?

☒ Yes ☐ No

If Yes, provide copies of advertisements that you are currently using or have placed in yellow pages (other than general listing), periodicals, flyers and handouts. Provide a copy of the script if you use voice or film media.

33. OTHER PRACTICES

Do you own or control any separate company or enterprise related to your medical practice?

☐ Yes ☒ No

If Yes, please explain: \_\_\_\_\_

ॐ नमो भगवते वासुदेवाय

100-443889-100

—

.....

ON / ARMY COMBAT

ON / ALLEN CONSULT

ON / JULY 1964

## 2 AM

## 2 AM

JUN-03-03 08:14AM FROM Birmingham  
02 JUN 3 2003 2:04 PM 06:00  
MSI-23-2003 1:46AM

T-239 P.013/021 F-762  
No. 5474 P. 12/13

**34 CURRENT MEMBERSHIPS AND ACTIVITIES**

List any membership in medical specialty societies, professional associations and hospital committees

Idaho Medical Association

Organization/Society/Committee Name Title or position held

Ada County Medical Association

Organization/Society/Committee Name Title or position held

American Academy of Family Practice

Organization/Society/Committee Name Title or position held

**35 PAST PRACTICE LOCATIONS**

List all locations you have practiced since completing your formal training (includes military, private, teaching and group organizations)

<u>Fairview Medical Clinic</u>	<u>Boise, ID</u>	<u>1989-1996</u>
Name/Type of practice	City/State	From (month/year) to (month/year)
Name/Type of practice	City/State	From (month/year) to (month/year)
Name/Type of practice	City/State	From (month/year) to (month/year)
Name/Type of practice	City/State	From (month/year) to (month/year)
Name/Type of practice	City/State	From (month/year) to (month/year)

**36 PAST HOSPITAL STAFF PRIVILEGE LOCATIONS**

If you have relocated your practice within the past five years, list names and addresses of hospitals where you had staff privileges prior to relocation

<u>Name of hospital</u>	<u>Street address</u>	<u>City</u>	<u>State</u>	<u>Zip</u>
Name of hospital	Street address	City	State	Zip
Name of hospital	Street address	City	State	Zip
Name of hospital	Street address	City	State	Zip

**37. PRIOR INSURANCE**

List all professional liability carriers who insured you, starting with your most recent carrier.  
Use a separate page if necessary

Chicago Insurance Company	DEP1100114	01-03	none
Name of carrier	Policy number	Coverage dates	Claims-made/Occurrences
Address	Policy limits	Deductible	Annual Premium
CNA		89-98	
Name of carrier	Policy number	Coverage dates	Claims-made/Occurrences
Address	Policy limits	Deductible	Annual Premium
Name of carrier	Policy Number	Coverage dates	Claims-made/Occurrences
Address	Policy limits	Deductible	Annual Premium

Complete an "Authorization to Release Information" for carriers listed above (see page 16)

If current policy is claims-made, have you or do you intend to purchase "tail" coverage? ☒ Yes ☐ No

If you have purchased "tail" coverage from your former carrier, please attach a copy of the "tail" coverage endorsement to this application.

**38. INSURANCE**

Has any insurance carrier ever denied, declined, cancelled, refused to renew, restricted or rated up professional liability insurance? ☐ Yes ☐ No

If Yes, give complete details including dates.

Please attach a copy of any non-renewal or cancellation letter to this application

**39. STAFF PRIVILEGES/MANAGED CARE ORGANIZATION ACTIONS OR INVESTIGATIONS**

a. Have you ever had any hospital or surgical outpatient privileges denied, suspended, revoked, restricted, reduced, not renewed, proctored or modified in any way? ☐ Yes ☐ No

- b. Have you ever been investigated by any entity which as its principal activity is a health care service plan, third party administrator, or other business or organization arranging for the provision of health care services, or by any entity or organization providing or responsible for the provision of health care services, including any medical corporation, independent practice association, preferred provider organization, physical panel, or other entity or arrangement entering into agreements with third party payors for the provision of medical care, for the purpose of disciplining you or limiting, revoking or suspending your continued exercise, maintenance or renewal right or entitlement to provide medical or surgical care to persons receiving health care arranged or rendered by such entity or organization?

☐ Yes ☒ No

If Yes, please furnish details, including facility or managed care organization name, dates, allegations, circumstances, and outcome on your letterhead.

#### 40. GOVERNMENTAL ACTION

- a. Have you ever been investigated as the subject of, charged with or convicted of a misdemeanor or felony?

☐ Yes ☒ No

- b. Have you ever entered a "no contest" plea to a crime, other than a traffic violation?

☐ Yes ☒ No

If you answered "Yes" to question 40 a. or b., please furnish full details on your letterhead, including the following information:

1. The nature of the investigation, the charge made or entered against you and the date and jurisdiction in which it was made or entered;
2. The substance of the investigation or allegations made or entered in the charge;
3. The manner in which the investigation or charge was resolved (i.e., dismissal, conviction, etc.); and
4. Any additional information concerning the investigation or charge as you may deem appropriate.

- c. Have you ever been investigated by any state or federal regulatory body or specialty society?

☒ Yes ☐ No

- d. Has any governmental agency ever suspended, revoked, restricted, placed you on probation, or taken any other action against your medical license or your narcotics license?

☐ Yes ☒ No

If you answered "Yes" to question 40 c. or d., please furnish full details on your letterhead, including the following information:

1. The reasons for the investigation, suspension, restriction, termination, curtailment, revocation, or non-renewal of your license, and/or the disciplinary action;
2. The substance of both the allegations and findings in any such action, proceeding, hearing, or procedure involving the suspension, restriction, termination, curtailment, revocation, or non-renewal of your license, and/or disciplinary action;
3. The date of the suspension, restriction, termination, curtailment, revocation, or non-renewal of your license, and/or the disciplinary action, the full name of the licensing agency and its complete address;
4. Any additional information concerning such action, proceedings, hearing, or procedure as you may deem appropriate.

**41. HEALTH**

a. Have you ever received treatment or consultation for drug or alcohol abuse?

☒ Yes ☐ No

b. Are you being treated for any medical condition, disease or illness that affects your ability to practice medicine?

☐ Yes ☒ No

If you answered "Yes" to question 41 a. or b., please furnish details, which must include:

1. The nature of the condition for which you sought treatment or consultation; the hospital or other institution at which you were treated or consulted and its full address; the hospital or other institution with which you were affiliated at the time and its full address; the name of the individual with whom you were treated or consulted; the date(s) of treatment or consultation;
2. The name of the treatment or consultation and the recommended course for continuing treatment or consultation;
3. The manner in which the condition for which you were treated or consulted currently affects your day-to-day activities.
4. Any additional information concerning the treatment or consultation as you may deem appropriate.

**42. CLAIMS**Have you ever been involved in a malpractice claim, suit or arbitration proceeding, or reported any incidents, which resulted in a claim to a former carrier?☒ Yes ☐ No

If Yes, please complete a claim information form for each (see pages 17-18)

***Application for Claims-Made Professional Liability Insurance***

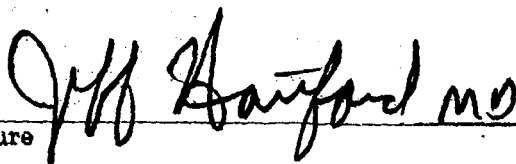
The undersigned declares that to the best of his/her knowledge the statements herein are true. Signing of this Application does not bind the undersigned to complete the insurance, but it is agreed that this Application shall be the basis of the contract should a Policy be issued, and that this Application will be attached and become part of such Policy, if issued. Underwriters hereby are authorized to make any investigation and inquiry in connection with this Application, as they deem necessary.

It is warranted that the particulars and statements contained in the Application for the proposed Policy and any materials submitted herewith (which shall be retained on files by Underwriters and which shall be deemed attached hereto, as if physically attached hereto), are the basis for the proposed Policy, and are to be considered as incorporated into and constituting a part of the proposed Policy.

It is agreed that in the event there is any material change to the answers in the questions contained herein prior to the effective date of the Policy, the Applicant will notify Underwriters and, at the sole discretion of Underwriters, any outstanding quotations may be modified or withdrawn.

The undersigned shall cooperate with NAS and Underwriters in all respects in matters pertaining to this insurance and shall provide information, attend hearings and trials, and assist in making settlements, securing and giving evidence, obtaining the attendance of witnesses, and otherwise facilitating the conduct of any proceeding in connection with the subject matter of this insurance, as may be selected by Underwriters.

Signature



Date

5.29.03

**Authorization to Release Information  
For Hospitals/Medical Staffs/Ambulatory Facilities**

As an applicant for professional liability insurance coverage, underwritten by certain Underwriters at Lloyd's of London, I hereby give my consent to NAS Insurance Services, Inc. (NAS), its agents and representatives, to make inquiries to hospitals, medical staffs, ambulatory facilities, health care service plans or other managed care organizations where I have exercised or applied for clinical privileges or memberships.

I grant permission to such hospitals, medical staffs and managed care organizations and their representatives and agents to provide information to NAS, which pertains to those privileges I have exercised and to my fitness and qualifications to exercise such privileges. This includes but is not limited to information relating to the scope of privileges granted, any special limitations imposed on such privileges and any information regarding any disciplinary action taken with respect to such privileges.

I further agree that the organization releasing the information, its representatives, agents and employees shall not incur any liability as a result of furnishing or releasing information pursuant to this authorization, even if such information is incomplete or incorrect.

Jeff Hartford MD Jeffrey F. Hartford MD 5.29.03  
Signature Print Name Date  
999 N. Curtis Ste 404 Boile ID 83706  
Street address City State Zip

**Authorization to Release Information**

I authorize the release to NAS Insurance Services, Inc. of information regarding past and pending claims and underwriting matters from my prior professional liability insurance carriers, or from my past and present medical association or society.

I further agree that the organization releasing the information, its agents, servants and employees shall not incur any liability as a result of any information released or furnished pursuant to this authorization including any errors, omissions or mistakes contained in such released information.

Jeff Hartford MD Jeffrey F. Hartford MD 5.29.03  
Signature Print Name Date  
999 N. Curtis Ste 404 Boile ID 83706  
Street address City State Zip

**CLAIM INFORMATION FORM**

Name of Patient: \_\_\_\_\_ Gender: \_\_\_\_\_ Age: \_\_\_\_\_

1. Condition and Diagnosis of Patient prior to treatment and/or surgery:

\_\_\_\_\_  
\_\_\_\_\_

2. Date(s) and type of treatment and/or surgery rendered by you:

\_\_\_\_\_  
\_\_\_\_\_

3. Condition of patient subsequent to treatment and/or surgery by you

\_\_\_\_\_  
\_\_\_\_\_

4. Nature of Allegations:

\_\_\_\_\_  
\_\_\_\_\_

5. Was a lawsuit ever filed against you? ☐ Yes ☐ No Case No. \_\_\_\_\_

6. Was it served? ☐ Yes ☐ No Date. \_\_\_\_\_

7. Name of Insurer Claim reported to (if any): \_\_\_\_\_

8. Are you represented by an attorney? ☐ Yes ☐ No

If Yes, name of attorney & law firm: \_\_\_\_\_

9. Present Status of Claim/Incident. Pending \_\_\_\_\_ Closed \_\_\_\_\_ In Suit \_\_\_\_\_

10. If Closed, Total Damages Paid: \$ \_\_\_\_\_ Total Expenses Paid: \$ \_\_\_\_\_

11. If Pending, is plaintiff demanding a settlement amount? ☐ Yes ☐ No

How much? \$ \_\_\_\_\_

Have you offered a settlement amount? ☐ Yes ☐ No

How much? \$ \_\_\_\_\_

Legal Expenses to Date: \$ \_\_\_\_\_



1. Names of other doctors and hospitals involved, if any:

---

2. Names of all defendants employed and/or supervised by you, if any:

---

3. If case tried to a plaintiff verdict, give explanation, including amounts and dates:

---

**PLEASE COMPLETE A CLAIM INFORMATION FORM FOR EACH PROFESSIONAL LIABILITY CLAIM, SUIT, AND ARBITRATION PROCEEDING, PAST OR PENDING, IN WHICH YOU HAVE BEEN INVOLVED DIRECTLY OR INDIRECTLY. MAKE ADDITIONAL COPIES AS NECESSARY.**



Serviced By.

**NAS Insurance Services, Inc.**  
Lloyd's Correspondent

07/02

Page 17 of 17

Professional Liability Insurance-  
Physicians & Surgeons  
© 2002 NAS Insurance Services, Inc.

RECEIVED TIME JUN. 3. 6:12AM

JH 59

00144

**JEFFREY F. HARTFORD, M.D.**

*Board Certified in Family Practice*

999 N. Curtis Rd.  
Suite 404  
Boise, Idaho 83706

(208) 367-3055  
(208) 367-6622 FAX

#1. My license to practice medicine was suspended for 6 months September 1996 to March 1997 for violating a stipulation I had signed with the Board of Medicine agreeing to abstain from drugs and alcohol.

#3. St. Alphonsus did not renew my staff privileges for one year following suspended medical license. I now have full staff privileges at St. Als hospital.

#7. In July 1996 a claim was settled out of court in the death of an infant with necrotizing enterocolitis for failure to diagnose. My ex-partner and I split responsibility 50/50 and my part of the settlement was \$50,000.

#10 I received inpatient drug and alcohol treatment for 3 months at Springbrook in Roseburg OR. in August 1998. At this time, my malpractice insurance refused to renew my contract with them. I have since signed with a new malpractice company.

RECEIVED TIME JUN. 3. 6:12AM

JH 60

00145

JUN-03-03 08:15AM FROM-C Birmingham

T-239 P.021/021 F-762

**Jeffrey F. Hartford, M.D.**

*Board Certified in Family Practice*

999 N. Curtis Rd.  
Suite 404  
Boise, Idaho 83706  
(208) 367-3055  
(208) 367-6622 FAX

RECEIVED TIME JUN. 3. 6:12AM

JH 61

00146

Jeffrey A. Thomson  
ELAM & BURKE, P.A.  
251 E. Front St., Ste. 300  
P.O. Box 1539  
Boise, Idaho 83701  
Telephone: (208) 343-5454  
Facsimile: (208) 384-5844  
jat@elamburke.com  
ISB #3380

NO. \_\_\_\_\_  
FILED \_\_\_\_\_  
A.M. \_\_\_\_\_ P.M. 2:44

NOV 13 2006

J. DAVID NAVARRO, Clerk  
By J. BLACK  
DEPUTY

Attorneys for Underwriters

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

H. RAY HARRISON and JULIE  
HARRISON, husband and wife,

Plaintiffs,

vs.

CERTAIN UNDERWRITERS AT  
LLOYD'S LONDON SUBSCRIBING TO  
POLICY NO. 20056 ISSUED TO JEFFREY  
HARTFORD, M.D. EFFECTIVE FROM  
JUNE 1, 2004 TO JUNE 1, 2005 WITH A  
RETROACTIVE EFFECTIVE DATE OF  
JUNE 1, 2003; NAS INSURANCE  
SERVICES, INC., a California corporation,

Defendants.

Case No. CV PI 0615687

UNDERWRITERS' ANSWER TO FIRST  
AMENDED COMPLAINT AND DEMAND  
FOR JURY TRIAL

Defendant, Certain Underwriters at Lloyd's London subscribing to Policy No. 20056  
issued to Jeffrey Hartford effective June 1, 2004 to June 1, 2005 ("Underwriters"), by and  
through its attorneys of record, Elam & Burke, P.A., and in answer to Plaintiffs' First Amended

UNDERWRITERS' ANSWER TO COMPLAINT AND  
DEMAND FOR JURY TRIAL – Page 1

00147

Complaint and Demand for Jury Trial and Declaratory Judgment admits, denies and alleges as follows:

### **INTRODUCTION**

The following defenses are not stated separately as to each claim for relief or allegation of Plaintiffs, nevertheless, the following defenses are applicable, where appropriate, to any and all of Plaintiffs' claims for relief. Underwriters, in asserting the following defenses does not admit that the burden of proving the allegations or denials contained in the defenses is upon this answering Defendant, but, to the contrary, asserts that by reason of said denials, and by reason of relevant statutory and judicial authority, the burden of proving the facts relevant to many of the defenses and affirmative defenses and the burden of proving the inverse of the allegations contained in many of the defenses and affirmative defenses is upon Plaintiffs. Moreover, Underwriters do not admit, in asserting any defense, any responsibility or liability but, to the contrary, specifically denies any and all allegations of responsibility and liability contained in Plaintiffs' First Amended Complaint.

### **FIRST DEFENSE**

Plaintiffs' First Amended Complaint fails to state a claim against Underwriters upon which relief can be granted.

### **SECOND DEFENSE**

Underwriters denies each and every allegation contained in Plaintiffs' First Amended Complaint not specifically admitted herein.

### **THIRD DEFENSE**

#### **PARTIES**

1. In response to Paragraph 1 of Plaintiffs' First Amended Complaint, Underwriters are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein, and therefore deny the same.

2. In response to Paragraph 2 of Plaintiffs' First Amended Complaint, Underwriters deny the allegations set forth therein.

3. In response to Paragraph 3 of Plaintiffs' First Amended Complaint, these allegations are directed toward a separate Defendant and, therefore, no response is necessary.

4. In response to Paragraph 4 of Plaintiffs' First Amended Complaint, Underwriters admit only that a document entitled Confidential Settlement, Assignment, Subrogation & Release Agreement was provided to counsel after this lawsuit was filed and that document speaks for itself.

#### **JURISDICTION AND VENUE**

5. In response to Paragraph 5 of Plaintiffs' First Amended Complaint, Plaintiffs attempt to set forth legal conclusions which do not require an answer.

6. In response to Paragraph 6 of Plaintiffs' First Amended Complaint, Underwriters deny that Idaho Code § 5-404 is the applicable venue statute and is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations and therefore denies the allegations contained therein.

### **GENERAL ALLEGATIONS**

7. In response to Paragraph 7 of Plaintiffs' First Amended Complaint, Underwriters are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein, and therefore deny the same.

8. In response to Paragraph 8 of Plaintiffs' First Amended Complaint, Underwriters are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein, and therefore deny the same.

9. In response to Paragraph 9 of Plaintiffs' First Amended Complaint, Underwriters are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein, and therefore deny the same.

10. In response to Paragraph 10 of Plaintiffs' First Amended Complaint, Underwriters are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein, and therefore deny the same.

11. In response to Paragraph 11 of Plaintiffs' First Amended Complaint, Underwriters are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein, and therefore deny the same.

12. In response to Paragraph 12 of Plaintiffs' First Amended Complaint, Underwriters are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein, and therefore deny the same.

13. In response to Paragraph 13 of Plaintiffs' First Amended Complaint, Underwriters are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein, and therefore deny the same.

14. In response to Paragraph 14 of Plaintiffs' First Amended Complaint, Underwriters are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein, and therefore deny the same.

15. In response to Paragraph 15 of Plaintiffs' First Amended Complaint, Underwriters admit only that there was a Physicians and Surgeons Professional Liability Policy, Policy No. 200056, issued to Jeffrey Hartford, M.D. containing a restrictive endorsement, which endorsement and policy speak for themselves and appear to be attached as Exhibit A to this First Amended Complaint but deny any and all further allegations.

16. In response to Paragraph 16 of Plaintiffs' First Amended Complaint, Underwriters admit the allegations set forth therein.

17. In response to Paragraph 17 of Plaintiffs' First Amended Complaint, Underwriters admit only that the policy speaks for itself and deny any remaining allegations.

18. In response to Paragraph 18 of Plaintiffs' First Amended Complaint, Underwriters admit only that the policy speaks for itself and deny any remaining allegations.

19. In response to Paragraph 19 of Plaintiffs' First Amended Complaint, Underwriters admit only that the policy speaks for itself and deny any remaining allegations.

20. In response to Paragraph 20 of Plaintiffs' First Amended Complaint, Underwriters admit only that the policy speaks for itself and deny any remaining allegations.



21. In response to Paragraph 21 of Plaintiffs' First Amended Complaint, Underwriters admit only that NAS received certain information from Jeffrey Hartford, M.D. regarding treatment of H. Ray Harrison but deny the remaining allegations therein.

22. In response to Paragraph 22 of Plaintiffs' First Amended Complaint, Underwriters are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein, and therefore deny the same.

23. In response to Paragraph 23 of Plaintiffs' First Amended Complaint, Underwriters are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein, and therefore deny the same.

24. In response to Paragraph 24 of Plaintiffs' First Amended Complaint, Underwriters are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein, and therefore deny the same.

25. In response to Paragraph 25 of Plaintiffs' First Amended Complaint, Underwriters admit only that the Complaint speaks for itself and deny the remaining allegations.

26. In response to Paragraph 26 of Plaintiffs' First Amended Complaint, Underwriters are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein, and therefore deny the same.

27. In response to Paragraph 27 of Plaintiffs' First Amended Complaint, Underwriters are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein, and therefore deny the same.

28. In response to Paragraph 28 of Plaintiffs' First Amended Complaint, Underwriters admit only that the letter dated August 27, 2004, disclaiming coverage speaks for itself and deny the remaining allegations set forth therein.

29. In response to Paragraph 29 of Plaintiffs' First Amended Complaint, Underwriters admit only that the letter dated August 27, 2004, disclaiming coverage speaks for itself and deny the remaining allegations set forth therein.

30. In response to Paragraph 30 of Plaintiffs' First Amended Complaint, Underwriters deny the allegations set forth therein.

31. In response to Paragraph 31 of Plaintiffs' First Amended Complaint, Underwriters admit only that a document entitled Confidential Settlement, Assignment, Subrogation & Release Agreement was provided to counsel after this lawsuit was filed and that document speaks for itself.

32. In response to Paragraph 32 of Plaintiffs' First Amended Complaint, Underwriters admit only that a document entitled Confidential Settlement, Assignment, Subrogation & Release Agreement was provided to counsel after this lawsuit was filed and that document speaks for itself.

**COUNT ONE**

***(Breach of Contract)***

33. In response to Paragraph 33 of Plaintiffs' First Amended Complaint, Underwriters replead and reallege each and every admission, denial and defense set forth in paragraph 1-32 above, as if set out in full herein.

34. In response to Paragraph 34 of Plaintiffs' First Amended Complaint, Underwriters deny the allegations set forth therein.

35. In response to Paragraph 35 of Plaintiffs' First Amended Complaint, Underwriters deny the allegations set forth therein.

36. In response to Paragraph 36 of Plaintiffs' First Amended Complaint, Underwriters deny the allegations set forth therein.

37. In response to Paragraph 37 of Plaintiffs' First Amended Complaint, Underwriters deny the allegations set forth therein.

38. In response to Paragraph 38 of Plaintiffs' First Amended Complaint, Underwriters deny the allegations set forth therein.

#### **COUNT TWO**

##### ***(Breach of the Implied Covenant of Good Faith and Fair Dealing)***

39. In response to Paragraph 39 of Plaintiffs' First Amended Complaint, Underwriters replead and reallege each and every admission, denial and defense set forth in paragraph 1-38 above, as if set out in full herein.

40. In response to Paragraph 40 of Plaintiffs' First Amended Complaint, Plaintiffs attempt to set forth a legal conclusion which does not require an answer.

41. In response to Paragraph 41 of Plaintiffs' First Amended Complaint, Underwriters deny the allegations set forth therein.

42. In response to Paragraph 42 of Plaintiffs' First Amended Complaint, Underwriters deny the allegations set forth therein.

43. In response to Paragraph 43 of Plaintiffs' First Amended Complaint, Underwriters deny the allegations set forth therein.

**COUNT THREE**

***(Tort of Bad Faith)***

44. In response to Paragraph 44 of Plaintiffs' First Amended Complaint, Underwriters replead and reallege each and every admission, denial and defense set forth in paragraph 1-43 above, as if set out in full herein.

45. In response to Paragraph 45 of Plaintiffs' First Amended Complaint, Underwriters deny the allegations set forth therein.

46. In response to Paragraph 46 of Plaintiffs' First Amended Complaint, Underwriters deny the allegations set forth therein.

47. In response to Paragraph 47 of Plaintiffs' First Amended Complaint, Underwriters deny the allegations set forth therein.

48. In response to Paragraph 48 of Plaintiffs' First Amended Complaint, Underwriters deny the allegations set forth therein. Underwriters further affirmatively allege that the matters set forth in Paragraph 48 violate Idaho Code § 6-1604, are premature and should be stricken from the First Amended Complaint.

49. In response to Paragraph 49 of Plaintiffs' First Amended Complaint, Plaintiffs attempt set forth legal conclusions which do not require an answer. To the extent that an answer is required, Underwriters deny the matter set forth in Paragraph 49. Underwriters further affirmatively allege that the matters set forth in Paragraph 49 violate Idaho Code § 6-1604, are premature and should be stricken from the First Amended Complaint.

#### **COUNT FOUR**

##### ***(Request for Declaratory Relief)***

50. In response to Paragraph 50 of Plaintiffs' First Amended Complaint, Underwriters replead and reallege each and every admission, denial and defense set forth in paragraph 1-49 above, as if set out in full herein.

51. In response to Paragraph 51 of Plaintiffs' First Amended Complaint, Underwriters deny the allegations set forth therein.

52. In response to Paragraph 52 of Plaintiffs' First Amended Complaint, Underwriters admit the allegations set forth therein.

53. In response to Paragraph 53 of Plaintiffs' First Amended Complaint, Underwriters deny the allegations set forth therein.

54. In response to Paragraph 54 of Plaintiffs' First Amended Complaint, Underwriters deny the allegations set forth therein.

55. In response to Paragraph 55 of Plaintiffs' First Amended Complaint, Underwriters deny the allegations set forth therein.

56. In response to Paragraph 56 of Plaintiffs' First Amended Complaint, Underwriters deny the allegations set forth therein.

57. In response to Paragraph 57 of Plaintiffs' First Amended Complaint, Plaintiffs attempt to set forth legal conclusions which do not require an answer.

#### **FIRST AFFIRMATIVE DEFENSE**

Between the named parties there is no case or controversy.

**SECOND AFFIRMATIVE DEFENSE**

That Plaintiffs' actions are barred herein by reason of failure of consideration.

**THIRD AFFIRMATIVE DEFENSE**

That a direct action by a third party has previously been determined by the Idaho Supreme Court to be without merit and the prosecution of this matter by Plaintiffs in their individual capacities is unreasonable, frivolous and without foundation, justifying the award of costs and attorney fees.

**FOURTH AFFIRMATIVE DEFENSE**

Plaintiffs lack standing to bring this action against Underwriters.

**FIFTH AFFIRMATIVE DEFENSE**

That Plaintiff Julie Harrison lacks standing to sue.

**SIXTH AFFIRMATIVE DEFENSE**

That Plaintiff Julie Harrison is not a proper party to this action.

**SEVENTH AFFIRMATIVE DEFENSE**

That Plaintiffs lack standing in their individual capacities to bring this action because they are not insureds or third party beneficiaries of the insurance policy.

**EIGHTH AFFIRMATIVE DEFENSE**

That Plaintiffs are not the real party in interest, contrary to Rule 17 of the Idaho Rules of Civil Procedure, with respect to their claim for damages.

**NINTH AFFIRMATIVE DEFENSE**

That Plaintiffs are estopped from asserting some or all of their claims and/or allegations against Underwriters herein.

**TENTH AFFIRMATIVE DEFENSE**

Plaintiffs and/or their assignors have waived some or all of their claims and/or allegations against Underwriters herein.

**ELEVENTH AFFIRMATIVE DEFENSE**

The Plaintiffs and/or their representatives and/or their assignors have failed to take reasonable steps to mitigate the claimed or alleged damages.

**TWELFTH AFFIRMATIVE DEFENSE**

That Plaintiffs do not have an insurable interest in the subject matter of any policy issued to Jeffrey Hartford, M.D.

**THIRTEENTH AFFIRMATIVE DEFENSE**

That Plaintiffs and/or their assignors are guilty of laches and unreasonable delay in bringing this action and in asserting any cause of action against Underwriters and that such laches and unreasonable delay were without good cause and substantially prejudiced Underwriters.

**FOURTEENTH AFFIRMATIVE DEFENSE**

That Plaintiffs are not in privity of contract and cannot bring this action against Underwriters.

**FIFTEENTH AFFIRMATIVE DEFENSE**

Plaintiffs and/or their assignors breached the policy of insurance which forms the basis of the causes of action.

**SIXTEENTH AFFIRMATIVE DEFENSE**

That the Plaintiffs and/or their assignors may have breached the implied covenant of good faith and fair dealing.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

In the event Plaintiffs recover a verdict or judgment against Underwriters, then said verdict or judgment must be reduced by the laws of the State of Idaho by those amounts which have been, or will, with reasonable certainty, replace or indemnify Plaintiffs, in whole or in part, for any past or future claims, from any collateral source.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

That the alleged damages or acts raised in the malpractice action First Amended Complaint are excepted from coverage or coverage is otherwise limited under the policy by virtue of the provisions therein.

**NINETEENTH AFFIRMATIVE DEFENSE**

That Plaintiffs and/or their assignors may have violated or failed to comply with certain conditions of the insuring agreement thereby prejudicing Underwriters and discharging them from obligations under the insuring agreement with respect to the claims set forth in the malpractice action.

**TWENTIETH AFFIRMATIVE DEFENSE**



Upon information and belief, the alleged damages complained of by Plaintiffs in the malpractice action were proximately caused by an intervening cause, namely the acts of third parties.

**TWENTY-FIRST AFFIRMATIVE DEFENSE**

The alleged assignment between Jeffrey Hartford, M.D. and Plaintiffs is void for want of consideration and/or mutuality of obligation.

**TWENTY-SECOND AFFIRMATIVE DEFENSE**

That the alleged assignment upon which Plaintiffs base this action is unconscionable.

**TWENTY-THIRD AFFIRMATIVE DEFENSE**

That the alleged assignment upon which Plaintiffs base this action is in violation of the assignment provision of the policy of insurance.

**TWENTY-FOURTH AFFIRMATIVE DEFENSE**

That Plaintiffs and/or their assignors and/or their respective representatives have failed to cooperate with Underwriters in violation of the terms and conditions of the policy of insurance.

**TWENTY-FIFTH AFFIRMATIVE DEFENSE**

That pursuant to the policy of insurance, arbitration is the sole remedy for any and all disputes arising out of, in connection with or relating to this policy.

**TWENTY-SIXTH AFFIRMATIVE DEFENSE**

Some or all of the alleged damages constitute pure economic loss and therefore are not recoverable or are beyond those statutorily permitted by Idaho Code § 6-1603.

**TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

That Plaintiffs and/or their assignors failed to provide a sufficient, and/or timely, proof of loss, a condition precedent.

**TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

The coverage for the malpractice claim became voidable due to the noncompliance of the insured in violation of the terms and condition of the policy.

**RULE 11 STATEMENT**

Underwriters have considered and believe that they may have additional defenses. Underwriters do not have enough information at this time to assert those additional defenses under Rule 11 of the Idaho Rules of Civil Procedure. Underwriters do not intend to waive any such defenses and specifically reserve the right to add such defenses by amending this answer if research of applicable legal principles and discovery of pertinent facts reveal a basis to assert additional affirmative defenses.

**DEMAND FOR JURY TRIAL**

Underwriters demand a trial by jury in accordance with the provision of Rule 38(b) of the Idaho Rules of Civil Procedure.

**REQUEST FOR ATTORNEY FEES**

Underwriters request that it be awarded its attorney fees and costs incurred herein pursuant to Idaho Code §§ 12-121, 12-123 or 41-1839 and Rules 11, 54(d) and 54(e) of the Idaho Rules of Civil Procedure.

WHEREFORE, Underwriters pray for judgment as follows:

- A. That Plaintiffs take nothing by way of their First Amended Complaint and Demand for Jury Trial and Declaratory Judgment;
- B. That the First Amended Complaint and Demand for Jury Trial and Declaratory Judgment be dismissed with prejudice;
- C. That Underwriters be awarded its costs, including attorney fees in defending this action; and
- D. For such other and further relief as the Court deems just and proper.

DATED this 13 day of November, 2006.

ELAM & BURKE, P.A.

By: 

Jeffrey A. Thomson, of the firm  
Attorneys for Defendants

CERTIFICATE OF SERVICE

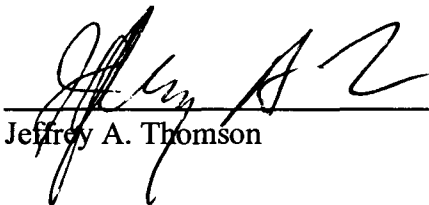
I HEREBY CERTIFY that on the 13 day of November, 2006, I caused a true and correct copy of the foregoing document to be served as follows:

Eric S. Rossman  
Erica S. Phillips  
ROSSMAN LAW GROUP, PLLC  
737 North 7th Street  
Boise, ID 83702

☒ U.S. Mail  
☐ Hand Delivery  
☐ Federal Express  
☐ Facsimile – 208-342-2170

James A. McGuire  
MENDES & MOUNT, LLP  
750 Seventh Avenue  
New York, NY 10019-6829

☒ U.S. Mail  
☐ Hand Delivery  
☐ Federal Express  
☐ Facsimile – 212-261-8750

  
\_\_\_\_\_  
Jeffrey A. Thomson

NO. \_\_\_\_\_  
FILED \_\_\_\_\_  
A.M. \_\_\_\_\_ P.M. 2:44

NOV 13 2006

J. DAVID NAVARRO, Clerk  
By J. BLACK  
DEPUTY

Jeffrey A. Thomson  
Joseph N. Pirtle  
ELAM & BURKE, P.A.  
251 E. Front St., Ste. 300  
P.O. Box 1539  
Boise, Idaho 83701  
Telephone: (208) 343-5454  
Facsimile: (208) 384-5844  
jat@elamburke.com  
Thomson - ISB #3380  
Pirtle - ISB #6973

Attorneys for Defendant Underwriters

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

H. RAY HARRISON and JULIE  
HARRISON, husband and wife,

Plaintiffs,

vs.

CERTAIN UNDERWRITERS AT  
LLOYD'S LONDON SUBSCRIBING TO  
POLICY NO. 20056 ISSUED TO JEFFREY  
HARTFORD, M.D. EFFECTIVE FROM  
JUNE 1, 2004 TO JUNE 1, 2005 WITH AN  
RETROACTIVE EFFECTIVE DATE OF  
JUNE 1, 2003; NAS INSURANCE  
SERVICES, INC., a California corporation,

Defendants.

Case No. CV PI 0615687

MOTION FOR STAY OF PROCEEDINGS  
AND TO COMPEL ARBITRATION

Defendant, Certain Underwriters at Lloyd's London subscribing to Policy No. 20056  
issued to Jeffrey Hartford effective June 1, 2004 to June 1, 2005 ("Underwriters"), by and  
through its attorneys of record, Elam & Burke, P.A., moves this Court, pursuant to Idaho Code §

MOTION FOR STAY OF PROCEEDINGS AND TO COMPEL ARBITRATION - 1

00164

7-901, *et seq.*, to issue an Order staying all proceedings in this action including, but not limited to, Plaintiffs' First Amended Complaint and Demand for Jury Trial and Declaratory Judgment, and compelling Plaintiffs to arbitrate all disputes between the parties on the grounds and for the reasons that this proceeding involves issues which are subject to an arbitration provision in the insurance contract requiring the controversy arising between the parties to be arbitrated.

This motion is based upon the records, files and pleadings in the above-entitled action, together with Underwriters' Memorandum in Support and the Affidavit of Jeffrey A. Thomson filed contemporaneously herewith.

DATED this 13 day of November, 2006.

ELAM & BURKE, P.A.

By: 

Jeffrey A. Thomson, of the firm  
Attorneys for Defendants

CERTIFICATE OF SERVICE

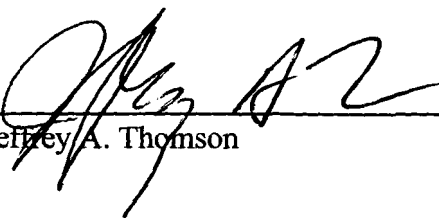
I HEREBY CERTIFY that on the 13 day of November, 2006, I caused a true and correct copy of the foregoing document to be served as follows:

Eric S. Rossman  
Erica S. Phillips  
ROSSMAN LAW GROUP, PLLC  
737 North 7th Street  
Boise, ID 83702

☒ U.S. Mail  
☐ Hand Delivery  
☐ Federal Express  
☐ Facsimile – 208-342-2170

James A. McGuire  
MENDES & MOUNT, LLP  
750 Seventh Avenue  
New York, NY 10019-6829

☒ U.S. Mail  
☐ Hand Delivery  
☐ Federal Express  
☐ Facsimile – 212-261-8750

  
\_\_\_\_\_  
Jeffrey A. Thomson

NO. \_\_\_\_\_  
A.M. \_\_\_\_\_ P.M. 4:09

NOV 27 2006

J. DAVID NAVARRO, Clerk  
By J. EARLE  
DEPUTY

Eric S. Rossman, ISB #4573  
Erica S. Phillips, ISB #6009  
Chad M. Nicholson, ISB #7506  
ROSSMAN LAW GROUP, PLLC  
737 N. 7<sup>th</sup> Street  
Boise, Idaho 83702  
Telephone: (208) 331-2030  
Facsimile: (208) 342-2170

Attorneys for Plaintiffs

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

H. RAY HARRISON and JULIE	)	CASE NO. CV PI 0615687
HARRISON, husband and wife, ,	)	
	)	
Plaintiffs,	)	PLAINTIFFS' NONOPPOSITION
	)	TO UNDERWRITERS' MOTION
-vs-	)	FOR STAY OF PROCEEDINGS
	)	AND TO COMPEL
CERTAIN UNDERWRITERS AT LLOYD'S,	)	ARBITRATION
LONDON; NAS INSURANCE SERVICES	)	
INC., a California corporation,	)	
	)	
Defendants.	)	

COME NOW, the above-named Plaintiffs, by and through their counsel of record, the law firm of ROSSMAN LAW GROUP, PLLC, and hereby give notice of non-opposition to Defendant Underwriters' Motion for Stay of Proceedings and to Compel Arbitration in the above-entitled matter.

PLAINTIFFS' NONOPPOSITION TO UNDERWRITERS' MOTION FOR STAY OF  
PROCEEDINGS AND TO COMPEL ARBITRATION - 1

00167  
ORIGINAL



DATED this 27<sup>th</sup> day of November, 2006.

ROSSMAN LAW GROUP, PLLC

By Erica S. Phillips  
Erica S. Phillips  
Attorneys for Plaintiffs

**CERTIFICATE OF SERVICE**

I hereby certify that on this 27<sup>th</sup> day of November, 2006, I caused to be served a true and correct copy of the foregoing document by the method indicated below to the following:

<u>✓</u>	US Mail	Jeffrey A. Thomson
<u>      </u>	Overnight Mail	Joseph N. Pirtle
<u>      </u>	Hand Delivery	ELAM & BURKE, P.A.
<u>✓</u>	Facsimile No. <u>384-5844</u>	Post Office Box 1539
		Boise, ID 83701

Erica S. Phillips  
Erica S. Phillips

C:\Documents and Settings\All Users\Documents\Work\H.Harrison, Ray\v. Lloyds of London\Pleadings\NonoppositiontoMotiontoCompelArbitration.doc

Jeffrey A. Thomson  
ELAM & BURKE, P.A.  
251 E. Front St., Ste. 300  
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Boise, Idaho 83701  
Telephone: (208) 343-5454  
Facsimile: (208) 384-5844  
jat@elamburke.com  
ISB #3380

Attorneys for NAS Insurance Company

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

H. RAY HARRISON and JULIE  
HARRISON, husband and wife,

Plaintiffs,

vs.

CERTAIN UNDERWRITERS AT  
LLOYD'S LONDON SUBSCRIBING TO  
POLICY NO. 20056 ISSUED TO JEFFREY  
HARTFORD, M.D. EFFECTIVE FROM  
JUNE 1, 2004 TO JUNE 1, 2005 WITH A  
RETROACTIVE EFFECTIVE DATE OF  
JUNE 1, 2003; NAS INSURANCE  
SERVICES, INC., a California corporation,

Defendants.

Case No. CV PI 0615687

NAS' ANSWER TO FIRST AMENDED  
COMPLAINT AND DEMAND FOR JURY  
TRIAL

Defendant, NAS Insurance Company ("NAS"), by and through its attorneys of record,  
Elam & Burke, P.A., and in answer to Plaintiffs' First Amended Complaint and Demand for Jury  
Trial and Declaratory Judgment admits, denies and alleges as follows:

NAS' ANSWER TO COMPLAINT AND DEMAND FOR JURY TRIAL – Page 1

NO. \_\_\_\_\_  
FILED \_\_\_\_\_  
A.M. \_\_\_\_\_ P.M. 4:30

NOV 27 2006

J. DAVID NAVARRO, Clerk  
By KATHY J. BIEHL  
DEPUTY

00169

### **INTRODUCTION**

The following defenses are not stated separately as to each claim for relief or allegation of Plaintiffs, nevertheless, the following defenses are applicable, where appropriate, to any and all of Plaintiffs' claims for relief. NAS, in asserting the following defenses does not admit that the burden of proving the allegations or denials contained in the defenses is upon this answering Defendant, but, to the contrary, asserts that by reason of said denials, and by reason of relevant statutory and judicial authority, the burden of proving the facts relevant to many of the defenses and affirmative defenses and the burden of proving the inverse of the allegations contained in many of the defenses and affirmative defenses is upon Plaintiffs. Moreover, NAS does not admit, in asserting any defense, any responsibility or liability but, to the contrary, specifically denies any and all allegations of responsibility and liability contained in Plaintiffs' First Amended Complaint.

### **FIRST DEFENSE**

Plaintiffs' First Amended Complaint fails to state a claim against NAS upon which relief can be granted.

### **SECOND DEFENSE**

NAS denies each and every allegation contained in Plaintiffs' First Amended Complaint not specifically admitted herein.

### **THIRD DEFENSE**

#### **PARTIES**

1. In response to Paragraph 1 of Plaintiffs' First Amended Complaint, NAS is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein, and therefore denies the same.

2. In response to Paragraph 2 of Plaintiffs' First Amended Complaint, these allegations are directed toward a separate Defendant and, therefore, no response is necessary.

3. In response to Paragraph 3 of Plaintiffs' First Amended Complaint, NAS admits the allegations set forth therein. **[Check with Client.]**

4. In response to Paragraph 4 of Plaintiffs' First Amended Complaint, NAS admits only that a document entitled Confidential Settlement, Assignment, Subrogation & Release Agreement was provided to counsel after this lawsuit was filed and that document speaks for itself.

#### **JURISDICTION AND VENUE**

5. In response to Paragraph 5 of Plaintiffs' First Amended Complaint, Plaintiffs attempt to set forth legal conclusions which do not require an answer.

6. In response to Paragraph 6 of Plaintiffs' First Amended Complaint, NAS denies that Idaho Code § 5-404 is the applicable venue statute and is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations and therefore denies the allegations contained therein.

### **GENERAL ALLEGATIONS**

7. In response to Paragraph 7 of Plaintiffs' First Amended Complaint, NAS is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein, and therefore denies the same.

8. In response to Paragraph 8 of Plaintiffs' First Amended Complaint, NAS is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein, and therefore denies the same.

9. In response to Paragraph 9 of Plaintiffs' First Amended Complaint, NAS is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein, and therefore denies the same.

10. In response to Paragraph 10 of Plaintiffs' First Amended Complaint, NAS is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein, and therefore denies the same.

11. In response to Paragraph 11 of Plaintiffs' First Amended Complaint, NAS is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein, and therefore denies the same.

12. In response to Paragraph 12 of Plaintiffs' First Amended Complaint, NAS is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein, and therefore denies the same.

13. In response to Paragraph 13 of Plaintiffs' First Amended Complaint, NAS is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein, and therefore denies the same.

14. In response to Paragraph 14 of Plaintiffs' First Amended Complaint, NAS is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein, and therefore denies the same.

15. In response to Paragraph 15 of Plaintiffs' First Amended Complaint, NAS admits only that there was a Physicians and Surgeons Professional Liability Policy, Policy No. 200056, issued to Jeffrey Hartford, M.D. containing a restrictive endorsement, which endorsement and policy speak for themselves and appear to be attached as Exhibit A to the First Amended Complaint but denies any and all further allegations.

16. In response to Paragraph 16 of Plaintiffs' First Amended Complaint, NAS admits the allegations set forth therein.

17. In response to Paragraph 17 of Plaintiffs' First Amended Complaint, NAS admits only that the policy speaks for itself and denies any remaining allegations.

18. In response to Paragraph 18 of Plaintiffs' First Amended Complaint, NAS admits only that the policy speaks for itself and denies any remaining allegations.

19. In response to Paragraph 19 of Plaintiffs' First Amended Complaint, NAS admits only that the policy speaks for itself and denies any remaining allegations.

20. In response to Paragraph 20 of Plaintiffs' First Amended Complaint, NAS admits only that the policy speaks for itself and denies any remaining allegations.

21. In response to Paragraph 21 of Plaintiffs' First Amended Complaint, NAS admits only that it received certain information from Jeffrey Hartford, M.D. regarding treatment of H. Ray Harrison but denies the remaining allegations therein.

22. In response to Paragraph 22 of Plaintiffs' First Amended Complaint, NAS is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein, and therefore denies the same.

23. In response to Paragraph 23 of Plaintiffs' First Amended Complaint, NAS is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein, and therefore denies the same.

24. In response to Paragraph 24 of Plaintiffs' First Amended Complaint, NAS is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein, and therefore denies the same.

25. In response to Paragraph 25 of Plaintiffs' First Amended Complaint, NAS admits only that the Complaint speaks for itself and denies the remaining allegations.

26. In response to Paragraph 26 of Plaintiffs' First Amended Complaint, NAS is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein, and therefore denies the same.

27. In response to Paragraph 27 of Plaintiffs' First Amended Complaint, NAS is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein, and therefore denies the same.

28. In response to Paragraph 28 of Plaintiffs' First Amended Complaint, NAS admits only that the letter dated August 27, 2004, disclaiming coverage speaks for itself and denies the remaining allegations set forth therein.

29. In response to Paragraph 29 of Plaintiffs' First Amended Complaint, NAS admits only that the letter dated August 27, 2004, disclaiming coverage speaks for itself and denies the remaining allegations set forth therein.

30. In response to Paragraph 30 of Plaintiffs' First Amended Complaint, NAS denies the allegations set forth therein.

31. In response to Paragraph 31 of Plaintiffs' First Amended Complaint, NAS admits only that a document entitled Confidential Settlement, Assignment, Subrogation & Release Agreement was provided to counsel after this lawsuit was filed and that document speaks for itself.

32. In response to Paragraph 32 of Plaintiffs' First Amended Complaint, NAS admits only that a document entitled Confidential Settlement, Assignment, Subrogation & Release Agreement was provided to counsel after this lawsuit was filed and that document speaks for itself.

### **COUNT ONE**

#### ***(Breach of Contract)***

33. In response to Paragraph 33 of Plaintiffs' First Amended Complaint, NAS repleads and realleges each and every admission, denial and defense set forth in paragraph 1-32 above, as if set out in full herein.

34. In response to Paragraph 34 of Plaintiffs' First Amended Complaint, this allegation and this cause of action are directed toward another Defendant and, therefore, no response by this answering Defendant is necessary.



35. In response to Paragraph 35 of Plaintiffs' First Amended Complaint, this allegation and this cause of action are directed toward another Defendant and, therefore, no response by this answering Defendant is necessary.

36. In response to Paragraph 36 of Plaintiffs' First Amended Complaint, this allegation and this cause of action are directed toward another Defendant and, therefore, no response by this answering Defendant is necessary.

37. In response to Paragraph 37 of Plaintiffs' First Amended Complaint, this allegation and this cause of action are directed toward another Defendant and, therefore, no response by this answering Defendant is necessary.

38. In response to Paragraph 38 of Plaintiffs' First Amended Complaint, this allegation and this cause of action are directed toward another Defendant and, therefore, no response by this answering Defendant is necessary.

### **COUNT TWO**

#### ***(Breach of the Implied Covenant of Good Faith and Fair Dealing)***

39. In response to Paragraph 39 of Plaintiffs' First Amended Complaint, NAS repleads and realleges each and every admission, denial and defense set forth in paragraph 1-38 above, as if set out in full herein.

40. In response to Paragraph 40 of Plaintiffs' First Amended Complaint, this allegation and this cause of action are directed toward another Defendant and, therefore, no response by this answering Defendant is necessary.

41. In response to Paragraph 41 of Plaintiffs' First Amended Complaint, this allegation and this cause of action are directed toward another Defendant and, therefore, no response by this answering Defendant is necessary.

42. In response to Paragraph 42 of Plaintiffs' First Amended Complaint, this allegation and this cause of action are directed toward another Defendant and, therefore, no response by this answering Defendant is necessary.

43. In response to Paragraph 43 of Plaintiffs' First Amended Complaint, this allegation and this cause of action are directed toward another Defendant and, therefore, no response by this answering Defendant is necessary.

**COUNT THREE**

***(Tort of Bad Faith)***

44. In response to Paragraph 44 of Plaintiffs' First Amended Complaint, NAS repleads and realleges each and every admission, denial and defense set forth in paragraph 1-43 above, as if set out in full herein.

45. In response to Paragraph 45 of Plaintiffs' First Amended Complaint, this allegation and this cause of action are directed toward another Defendant and, therefore, no response by this answering Defendant is necessary.

46. In response to Paragraph 46 of Plaintiffs' First Amended Complaint, this allegation and this cause of action are directed toward another Defendant and, therefore, no response by this answering Defendant is necessary.

47. In response to Paragraph 47 of Plaintiffs' First Amended Complaint, this allegation and this cause of action are directed toward another Defendant and, therefore, no response by this answering Defendant is necessary.

48. In response to Paragraph 48 of Plaintiffs' First Amended Complaint, this allegation and this cause of action are directed toward another Defendant and, therefore, no response by this answering Defendant is necessary.

49. In response to Paragraph 49 of Plaintiffs' First Amended Complaint, Plaintiffs attempt set forth legal conclusions which do not require an answer. To the extent that an answer is required, NAS denies the matters set forth in Paragraph 49. NAS further affirmatively alleges that the matters set forth in Paragraph 49 violate Idaho Code § 6-1604, are premature and should be stricken from the First Amended Complaint.

#### **COUNT FOUR**

##### ***(Request for Declaratory Relief)***

50. In response to Paragraph 50 of Plaintiffs' First Amended Complaint, NAS repleads and realleges each and every admission, denial and defense set forth in paragraph 1-49 above, as if set out in full herein.

51. In response to Paragraph 51 of Plaintiffs' First Amended Complaint, this allegation and this cause of action are directed toward another Defendant and, therefore, no response by this answering Defendant is necessary.

52. In response to Paragraph 52 of Plaintiffs' First Amended Complaint, this allegation and this cause of action are directed toward another Defendant and, therefore, no response by this answering Defendant is necessary.

53. In response to Paragraph 53 of Plaintiffs' First Amended Complaint, this allegation and this cause of action are directed toward another Defendant and, therefore, no response by this answering Defendant is necessary.

54. In response to Paragraph 54 of Plaintiffs' First Amended Complaint, this allegation and this cause of action are directed toward another Defendant and, therefore, no response by this answering Defendant is necessary.

55. In response to Paragraph 55 of Plaintiffs' First Amended Complaint, this allegation and this cause of action are directed toward another Defendant and, therefore, no response by this answering Defendant is necessary.

56. In response to Paragraph 56 of Plaintiffs' First Amended Complaint, this allegation and this cause of action are directed toward another Defendant and, therefore, no response by this answering Defendant is necessary.

57. In response to Paragraph 57 of Plaintiffs' First Amended Complaint, Plaintiffs attempt to set forth legal conclusions which do not require an answer.

**FIRST AFFIRMATIVE DEFENSE**

Between the named parties there is no case or controversy.

**SECOND AFFIRMATIVE DEFENSE**

That Plaintiffs' actions are barred herein by reason of failure of consideration.

**THIRD AFFIRMATIVE DEFENSE**

Plaintiffs lack standing to bring this action against NAS.

**FOURTH AFFIRMATIVE DEFENSE**

That Plaintiff Julie Harrison lacks standing to sue.

**FIFTH AFFIRMATIVE DEFENSE**

That Plaintiff Julie Harrison is not a proper party to this action.

**SIXTH AFFIRMATIVE DEFENSE**

That Plaintiffs lack standing in their individual capacities to bring this action because they are third party beneficiaries to any relationship or agreement between NAS and Underwriters.

**SEVENTH AFFIRMATIVE DEFENSE**

That Plaintiffs are not the real party in interest, contrary to Rule 17 of the Idaho Rules of Civil Procedure, with respect to their claim for damages.

**EIGHTH AFFIRMATIVE DEFENSE**

That Plaintiffs are estopped from asserting some or all of their claims and/or allegations against NAS herein.

**NINTH AFFIRMATIVE DEFENSE**

Plaintiffs and/or their assignors have waived some or all of their claims and/or allegations against NAS herein.

**TENTH AFFIRMATIVE DEFENSE**

The Plaintiffs and/or their representatives and/or their assignors have failed to take reasonable steps to mitigate the claimed or alleged damages.

**ELEVENTH AFFIRMATIVE DEFENSE**

That Plaintiffs do not have an insurable interest in the subject matter of any policy issued to Jeffrey Hartford, M.D.

**TWELFTH AFFIRMATIVE DEFENSE**

That Plaintiffs and/or their assignors are guilty of laches and unreasonable delay in bringing this action and in asserting any cause of action against NAS and that such laches and unreasonable delay were without good cause and substantially prejudiced NAS.

**THIRTEENTH AFFIRMATIVE DEFENSE**

That Plaintiffs are not in privity of contract with and cannot bring this action against NAS.

**FOURTEENTH AFFIRMATIVE DEFENSE**

Plaintiffs and/or their assignors breached the policy of insurance which forms the basis of the causes of action.

**FIFTEENTH AFFIRMATIVE DEFENSE**

In the event Plaintiffs recover a verdict or judgment against NAS, then said verdict or judgment must be reduced by the laws of the State of Idaho by those amounts which have been, or will, with reasonable certainty, replace or indemnify Plaintiffs, in whole or in part, for any past or future claims, from any collateral source.

**SIXTEENTH AFFIRMATIVE DEFENSE**

That the alleged damages or acts raised in the malpractice action are excepted from coverage or coverage is otherwise limited under the policy by virtue of the provisions therein.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

That Plaintiffs and/or their assignors may have violated or failed to comply with certain conditions of the insuring agreement thereby prejudicing NAS and discharging it from

obligations under the insuring agreement with respect to the claims set forth in the malpractice action.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

Upon information and belief, the alleged damages complained of by Plaintiffs in the malpractice action were proximately caused by an intervening cause, namely the acts of third parties.

**NINETEENTH AFFIRMATIVE DEFENSE**

The alleged assignment between Jeffrey Hartford, M.D. and Plaintiffs is void for want of consideration and/or mutuality of obligation.

**TWENTIETH AFFIRMATIVE DEFENSE**

That the alleged assignment upon which Plaintiffs base this action is unconscionable.

**TWENTY-FIRST AFFIRMATIVE DEFENSE**

That the alleged assignment upon which Plaintiffs base this action is in violation of the assignment provision of the policy of insurance.

**TWENTY-SECOND AFFIRMATIVE DEFENSE**

That pursuant to the policy of insurance, arbitration is the sole remedy for any and all disputes arising out of, in connection with or relating to this policy.

**TWENTY-THIRD AFFIRMATIVE DEFENSE**

Some or all of the alleged damages constitute pure economic loss and therefore are not recoverable or are beyond those statutorily permitted by Idaho Code § 6-1603.

**TWENTY-FOURTH AFFIRMATIVE DEFENSE**

That Plaintiffs and/or their assignors failed to provide a sufficient, and/or timely, proof of loss, a condition precedent.

**TWENTY-FIFTH AFFIRMATIVE DEFENSE**

The coverage for the malpractice claim became voidable due to the noncompliance by the insured in violation of the terms and conditions of the policy.

**RULE 11 STATEMENT**

NAS has considered and believes that it may have additional defenses. NAS does not have enough information at this time to assert those additional defenses under Rule 11 of the Idaho Rules of Civil Procedure. NAS does not intend to waive any such defenses and specifically reserves the right to add such defenses by amending this answer if research of applicable legal principles and discovery of pertinent facts reveal a basis to assert additional affirmative defenses.

**DEMAND FOR JURY TRIAL**

NAS demands a trial by jury in accordance with the provision of Rule 38(b) of the Idaho Rules of Civil Procedure.

**REQUEST FOR ATTORNEY FEES**

NAS requests that it be awarded its attorney fees and costs incurred herein pursuant to Idaho Code §§ 12-121, 12-123 or 41-1839 and Rules 11, 54(d) and 54(e) of the Idaho Rules of Civil Procedure.

WHEREFORE, NAS pray for judgment as follows:



A. That Plaintiffs take nothing by way of their First Amended Complaint and Demand for Jury Trial and Declaratory Judgment;

B. That the First Amended Complaint and Demand for Jury Trial and Declaratory Judgment be dismissed with prejudice;

C. That NAS be awarded its costs, including attorney fees in defending this action;  
and

D. For such other and further relief as the Court deems just and proper.

DATED this 27 day of November, 2006.

ELAM & BURKE, P.A.

By: 

Jeffrey A. Thomson, of the firm  
Attorneys for Defendants

CERTIFICATE OF SERVICE

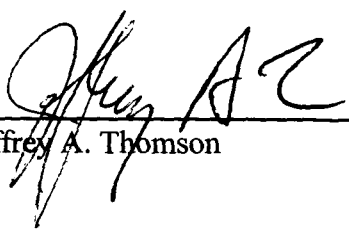
I HEREBY CERTIFY that on the 27 day of November, 2006, I caused a true and correct copy of the foregoing document to be served as follows:

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Erica S. Phillips  
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James A. McGuire  
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750 Seventh Avenue  
New York, NY 10019-6829

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\_\_\_\_\_  
Jeffrey A. Thomson

NO. \_\_\_\_\_  
A.M. \_\_\_\_\_ FILED 3:29 P.M.

APR 17 2008

J. DAVID NAVARRO, Clerk  
By J. EARLE  
DEPUTY

Eric S. Rossman, ISB #4573  
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Facsimile: (208) 342-2170

Attorneys for Plaintiffs

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

H. RAY HARRISON and JULIE  
ANDERSON, husband and wife,

Plaintiffs,

-vs-

CERTAIN UNDERWRITERS AT LLOYD'S,  
LONDON SUBSCRIBING TO POLICY NO.  
20056 ISSUED TO JEFFREY HARTFORD,  
M.D. EFFECTIVE FROM JUNE 1, 2004 TO  
JUNE 1, 2005 WITH AN RETROACTIVE  
EFFECTIVE DATE OF JUNE 1, 2003; NAS  
INSURANCE SERVICES INC., a California  
corporation,

Defendants.

CASE NO. CV PI 0615687

PLAINTIFFS' MOTION TO  
VACATE ARBITRATOR'S  
AWARD

COME NOW, the above-named Plaintiffs, by and through their counsel of record,  
the law firm of ROSSMAN LAW GROUP, PLLC, and respectfully request that the Court vacate  
the award of the arbitrator granting summary judgment to Defendants in this matter.

PLAINTIFFS' MOTION TO VACATE ARBITRATOR'S AWARD - 1

00186

This motion is brought pursuant to the Uniform Arbitration Act and the Federal Arbitration Act and is supported by the Memorandum of Law and Affidavit of Chad M. Nicholson filed concurrently herewith.

ORAL ARGUMENT IS REQUESTED.

DATED this 17<sup>th</sup> day of April, 2008.

ROSSMAN LAW GROUP, PLLC

By Erica S. Phillips  
Erica S. Phillips  
Attorneys for Plaintiffs

### CERTIFICATE OF SERVICE

I hereby certify that on this 17<sup>th</sup> day of April, 2008, I caused to be served a true and correct copy of the foregoing document by the method indicated below to the following:

<input type="checkbox"/>	US Mail	Jeffrey A. Thomson
<input checked="" type="checkbox"/>	Overnight Mail	Joseph N. Pirtle
<input type="checkbox"/>	Hand Delivery	ELAM & BURKE, P.A.
<input type="checkbox"/>	Facsimile No. <u>384-5844</u>	Post Office Box 1539
		Boise, ID 83701

Erica S. Phillips  
Erica S. Phillips

\\Fileserver\Documents\Work\H\Harrison, Ray\w. Lloyds of London\Pleadings\MotionVacateAward.doc

Jeffrey A. Thomson, ISB # 3380  
Matthew C. Parks, ISB # 7419  
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Attorneys for Defendant

NO. 017 FILED  
A.M. P.M.

APR 25 2008

J. DAVID NAVARRO, Clerk  
By A. GARDEN  
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

H. RAY HARRISON and JULIE  
HARRISON, husband and wife,

Plaintiffs,

vs.

CERTAIN UNDERWRITERS AT  
LLOYD'S LONDON SUBSCRIBING TO  
POLICY NO. 20056 ISSUED TO JEFFREY  
HARTFORD, M.D. EFFECTIVE FROM  
JUNE 1, 2004 TO JUNE 1, 2005 WITH AN  
RETROACTIVE EFFECTIVE DATE OF  
JUNE 1, 2003; NAS INSURANCE  
SERVICES, INC., a California corporation,

Defendants.

Case No. CV PI 0615687

MOTION TO LIFT STAY OF  
PROCEEDINGS

Applicant, Certain Underwriters of Lloyds London Subscribing to Policy No. 20056  
Issued to Jeffrey Hartford, M.D. Effective From June 1, 2004 to June 1, 2005 with Retroactive  
Effective Date of June 1, 2003 and NAS Insurance Services, Inc. ("Underwriters"), by and  
through its attorneys of record, Elam & Burke, P.A., hereby moves this Court to lift the stay of  
MOTION TO LIFT STAY OF PROCEEDINGS – 1

00188

proceedings entered on December 5, 2006, for the reason that the parties have arbitrated their disputes as directed by the Court and Underwriters now seeks to appear before the Court to confirm the arbitrator's award.

DATED this 24 day of April, 2008.

ELAM & BURKE, P.A.

By: Matthew Parker  
for Jeffrey A. Thomson, of the firm  
Attorneys for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 24 day of April, 2008, I caused a true and correct copy of the foregoing document to be served as follows:

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Matthew Parker  
for Jeffrey A. Thomson

NO. 917 FILED  
A.M. 917 P.M.

APR 25 2008

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By A. GARDEN  
DEPUTY

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mcp@elamburke.com

Attorneys for Defendant

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

H. RAY HARRISON and JULIE  
HARRISON, husband and wife,

Plaintiffs,

vs.

CERTAIN UNDERWRITERS AT LLOYD'S  
LONDON SUBSCRIBING TO POLICY NO.  
20056 ISSUED TO JEFFREY HARTFORD,  
M.D. EFFECTIVE FROM JUNE 1, 2004 TO  
JUNE 1, 2005 WITH AN RETROACTIVE  
EFFECTIVE DATE OF JUNE 1, 2003; NAS  
INSURANCE SERVICES, INC., a California  
corporation,

Defendants.

Case No. CV PI 0615687

APPLICATION FOR CONFIRMATION OF  
ARBITRATION AWARD

Applicant, Certain Underwriters of Lloyds London Subscribing to Policy No. 20056  
Issued to Jeffrey Hartford, M.D. Effective From June 1, 2004 to June 1, 2005 with Retroactive  
Effective Date of June 1, 2003 and NAS Insurance Services, Inc. ("Underwriters"), by and

APPLICATION FOR CONFIRMATION OF ARBITRATION AWARD - 1

00190

19

through its attorneys of record, Elam & Burke, P.A., hereby makes application for confirmation of arbitration awards pursuant to the Idaho Uniform Arbitration Act as follows:

**JURISDICTIONAL STATEMENT**

1. Applicant Underwriters is, and at all times material herein was authorized to do insurance business in the state of Idaho.
2. Respondents Ray and Julie Harrison are, and at all times material herein were, residents of the state of Idaho.
3. This Court has jurisdiction over the parties to this matter because there is an agreement between the parties to submit matters of the kind alleged herein to arbitration and this is not an arbitration between employers and employees or between their respective representatives as set forth in Idaho Code § 7-901.
4. Jurisdiction is proper under Idaho Code § 7-917.
5. Venue is proper in Ada County pursuant to Idaho Code § 7-918 in that the arbitration hearing was held in Ada County and this Court heard the original application to compel arbitration and Plaintiffs filed their complaint in Ada County.

**GENERAL ALLEGATIONS**

6. Underwriters issued a medical malpractice insurance policy to Dr. Hartford, Policy No. 20056.
7. On November 14, 2003, Plaintiff Ray Harrison presented to the Emergency Room at Saint Alphonsus Regional Medical Center, where he was treated by Dr. Hartford, as well as other physicians. On April 28, 2004, Plaintiffs Ray and Julie Harrison filed a complaint for



negligence against Dr. Hartford for his alleged negligent treatment of Plaintiff Ray Harrison in November 2003.

8. Defendant Underwriters initially tendered a defense to Dr. Hartford under a reservation of rights.

9. The malpractice claim brought by the Harrisons against Dr. Hartford was subsequently denied by Underwriters.

10. On August 11, 2006, the Harrisons settled their claim against Dr. Hartford for the sum of thirty two thousand five hundred dollars and no cents (\$32,500.00). Dr. Hartford, in consideration for the agreement, stipulated that a judgment be entered against him for one million dollars (\$1,000,000.00), and further assigned any right or interest Dr. Hartford had against Underwriters based on Underwriters denial of coverage for the Harrisons' claim.

11. On October 11, 2006, Plaintiffs (as assignees) filed a Complaint and Demand for Jury Trial and Declaratory Judgment in this Court against Underwriters.

12. On November 13, 2006, Underwriters filed its Answer to First Amended Complaint and Demand for Jury Trial. On the same day, Underwriters filed a Motion for Stay of Proceedings and to Compel Arbitration. The medical malpractice insurance policy contained an arbitration clause. Plaintiffs wiled a non-opposition to the motion, which was granted on December 5, 2006, by the Court.

13. The parties agreed that the arbitration proceedings would be governed by the Idaho Uniform Arbitration Act.

14. The parties presented their claims to James Gillespie as the single arbitrator

selected jointly by the parties. Mr. Gillespie was presented with cross motions for summary judgment and on January 25, 2008, issued his decision, attached hereto as Exhibit A.

**APPLICATION FOR CONFIRMATION OF AWARD**

15. Underwriters incorporates by reference, as if fully set forth herein, paragraphs 1 through 13.

16. Underwriters hereby apply to the Court for an order confirming the arbitration award rendered by the parties chosen arbitrator on January 25, 2008, pursuant to Idaho Code § 7-911.

17. The grounds for vacating the arbitrator's decision urged by Plaintiffs are without merit and/or not recognized under Idaho law. If the Court denies Plaintiffs' motion to vacate, the Idaho Uniform Arbitration Act, Idaho Code § 7-912(5)(d), allows this Court to simultaneously confirm the award.

18. Underwriters further seeks an award of the costs of this Application and of any proceeding subsequent thereto by the Court pursuant to Idaho Code § 7-914.

**PRAYER FOR RELIEF**

Underwriters hereby prays:

1. That this Court grant an order confirming the arbitration award;
2. That this Court enter judgment consistent with the arbitration award in the form attached hereto as Exhibit B;
3. That this Court award to Underwriters its costs, including attorney fees, of the Application and the proceedings subsequent thereto pursuant to Idaho Code §§ 7-914, 12-121,

12-123 and the Idaho Rules of Civil Procedure Rule 54(e)(1), and pursuant to the terms of the Insurance Agreement; and

4. That this Court award such further relief as the Court deems just.

DATED this 24 day of April, 2008.

ELAM & BURKE, P.A.

By: Matthew Parker  
for Jeffrey A. Thomson, of the firm  
Attorneys for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 24 day of April, 2008, I caused a true and correct copy of the foregoing document to be served as follows:

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Matthew Parker  
for Jeffrey A. Thomson

IN THE MATTER OF THE ARBITRATION

H. RAY HARRISON and JULIE  
HARRISON, husband and wife,

Plaintiffs,

vs.

CERTAIN UNDERWRITERS AT LLOYD'S  
LONDON SUBSCRIBING TO POLICY  
NO. 20056 ISSUED TO JEFFREY  
HARTFORD, M.D. EFFECTIVE FROM  
JUNE 1, 2004 TO JUNE 1, 2005 WITH  
A RETROACTIVE EFFECTIVE DATE OF  
JUNE 1, 2003; NAS INSURANCE  
SERVICES, INC., a California  
corporation,

Defendants.

Case No. CV PI 0615687

ARBITRATION DECISION

THIS MATTER having been submitted to arbitration by the parties as to all issues arising out of the lawsuit filed by H. Ray Harrison and Julie Harrison, husband and wife, ("Harrisons") as the assignee under an assignment of rights from the insured, Dr. Jeffrey Hartford against certain underwriters at Lloyds London (hereinafter "Underwriters") for breach of contract, bad faith, breach of the Implied Covenant of Good Faith and Fair Dealing and Request for Declaratory Relief.

The Harrisons are not insured by Underwriters. Harrisons'

ARBITRATION DECISION -1-

00195  
EXHIBIT A

action against Underwriters is based upon the assignment of rights from the insured, Dr. Jeffrey Hartford ("Dr. Hartford").

Harrisons had previously instituted a malpractice suit against Dr. Hartford. Harrisons' pre-litigation demand was presented to Dr. Hartford, and Dr. Hartford gave notice of Harrisons' malpractice claim to Underwriters.

Underwriters accepted the claim, but did so under a reservation of rights. As the malpractice case unfolded, Dr. Hartford admitted that he had been drinking alcohol and that he had treated H. Ray Harrison while Dr. Hartford was under the influence of alcohol.

Dr. Hartford's policy with Underwriters contained a number of endorsements, one of which is as follows:

"In consideration of the premium charged the attached Stipulated Settlement and Disciplinary Order, dated January 29, 1999, is hereby made part of the policy. Any failure to adhere to the terms and conditions of the Order will be in violation of the policy and will render the coverage void."

The endorsement was in effect at the time Dr. Hartford treated Mr. Harrison.

The Underwriters' policy with Dr. Hartford was a claims made policy with effective dates of January 1, 2004 to June 1, 2005 with a retroactive date of June 1, 2003. This policy was subject to a special endorsement incorporated in a stipulated settlement and disciplinary order ("Disciplinary Order") entered by the Idaho

State Board of Medicine. The Disciplinary Order was in effect at the time of Dr. Hartford's treating Mr. Harrison. The Idaho State Board of Medicine determined that Dr. Hartford had violated the terms and conditions of the Second Amended Stipulation and Order.

There are generally two duties owed by an insurance company to an insured where a claim against an insured is covered by the policy:

1. The duty to defend; and,
2. The duty to indemnify.

Dr. Hartford had a history with the Idaho State Board of Medicine for prior drinking problems which include a Stipulation and Order dated in 1995, and 1996, an Amended Stipulation and Order in 1997, August 1998, and then the Disciplinary Order incorporated into the endorsement which is the Second Amended Stipulation and Disciplinary Order dated January 1999. The Disciplinary Order specifically required Dr. Hartford to "...abstain completely..." from the use of alcohol.

After a very complete and detailed examination of the entire record on several occasions, the Arbitrator makes the following determinations:

The basic and overall issue in this arbitration proceeding is what was the effect of violating the stipulated order, and was the failure to adhere to the terms and provisions of the stipulated order a violation of the policy and thereby rendering the coverage void, or rendering a rescission or cancellation of the entire policy.

The issue is whether or not there was evidence to support a rescission or cancellation of the entire policy, or in the alternative, a denial of the Harrisons claim only. In the event that there is no rescission or cancellation, there is no requirement for the return of the premiums.

Based upon a careful review of the pleadings, the orders of the Idaho Board of Medicine, and the stipulation entered into by Dr. Hartford, it is the Arbitrator's decision that the Idaho Board of Medicine determined that Dr. Hartford was using alcohol at the time that he was treating Mr. Harrison, which was confirmed in the testimony by Mrs. Harrison, the use of alcohol was in violation of the Disciplinary Order, and violated the condition for coverage, and therefore excluded coverage for the Harrisons' claim. At the time of Dr. Hartford's violation of the order and stipulation, he violated the special endorsement and Underwriter's was under no further obligation or duty to defend and because of the violation there was no duty to indemnify. Because of this determination that Dr. Hartford had violated the special endorsement, and the coverage as to Harrisons malpractice claim was void, there was no breach of contract and Harrisons' causes of action are dismissed.

As a result of only the Harrisons' claim being excluded by the special endorsement and because the Arbitrator finds that there was no rescission or cancellation of the whole policy, there was no requirement to tender the premiums.

With respect to the breach of contract, bad faith and other

claims, the Arbitrator has found that the contract and the existence of the breach of the contractual duties is essential to all of these causes of action. Therefore, based upon the determination that there was no coverage, a natural result thereof is that all of the causes of action must be dismissed as a matter of law.

ARBITRATOR'S FEES

The parties will each pay one-half (1/2) of the Arbitrator's fees in the sum of \$1,975.00.

DATED this 25 day of January, 2008.

  
JAMES R. GILLESPIE



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the  
foregoing document entitled ARBITRATOR'S DECISION was served this  
25 day of January, 2008, by:

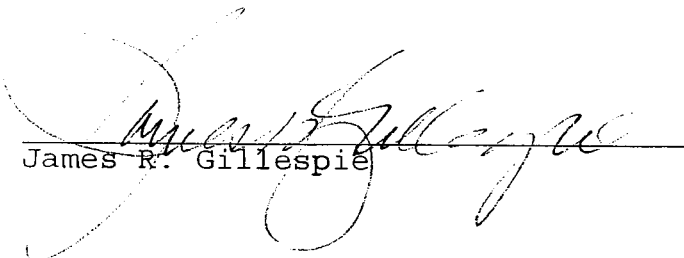
U.S. Mail, postage prepaid  
Personal delivery  
Facsimile transmission  
Other

X  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

on the following:

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ROSSMAN LAW GROUP  
737 N. 7<sup>th</sup> Street  
Boise, ID 83702

Jeffrey A. Thomson  
ELAM & BURKE  
P.O. Box 1539  
Boise, ID 83701

  
\_\_\_\_\_  
James R. Gillespie

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

H. RAY HARRISON and JULIE  
HARRISON, husband and wife,

Plaintiffs,

vs.

CERTAIN UNDERWRITERS AT  
LLOYD'S LONDON SUBSCRIBING TO  
POLICY NO. 20056 ISSUED TO JEFFREY  
HARTFORD, M.D. EFFECTIVE FROM  
JUNE 1, 2004 TO JUNE 1, 2005 WITH AN  
RETROACTIVE EFFECTIVE DATE OF  
JUNE 1, 2003; NAS INSURANCE  
SERVICES, INC., a California corporation,

Defendants.

Case No. CV PI 0615687

JUDGMENT

The Court, having granted the Application for Confirmation of Arbitration Award filed by Certain Underwriters of Lloyds London Subscribing to Policy No. 20056 Issued to Jeffrey Hartford, M.D. Effective From June 1, 2004 to June 1, 2005 with Retroactive Effective Date of June 1, 2003 and NAS Insurance Services, Inc. ("Underwriters"), hereby enters Judgment against H. Ray Harrison and Julie Harrison in favor of Underwriters consistent with the Arbitration Decision entered in this matter on January 25, 2008.

The Court further decrees that Underwriters are the prevailing parties in this matter and entitled to costs and fees in an amount to be proven pursuant to Idaho Code § 7-914.

JUDGMENT – 1

00201  
EXHIBIT B

DATED this \_\_\_\_\_ day of April, 2008.

---

Honorable Ronald J. Wilper  
Ada County District Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the \_\_\_\_\_ day of April, 2008, I caused a true and correct copy of the foregoing document to be served as follows:

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Erica S. Phillips  
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Matthew C. Parks  
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Deputy Clerk

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Attorneys for Defendant

FILED  
A.M. P.M. 451

MAY 15 2008

J. DAVID NAVARRO, Clerk  
By A. GARDEN  
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

H. RAY HARRISON and JULIE  
HARRISON, husband and wife,

Plaintiffs,

vs.

CERTAIN UNDERWRITERS AT  
LLOYD'S LONDON SUBSCRIBING TO  
POLICY NO. 20056 ISSUED TO JEFFREY  
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JUNE 1, 2003; NAS INSURANCE  
SERVICES, INC., a California corporation,

Defendants.

Case No. CV PI 0615687

**REPLY TO PLAINTIFFS'  
MEMORANDUM IN OPPOSITION TO  
DEFENDANT'S APPLICATION FOR  
CONFIRMATION OF ARBITRATION  
AWARD AND REPLY IN SUPPORT OF  
PLAINTIFFS' MOTION TO VACATE  
ARBITRATOR'S AWARD**

ORIGINAL

**I. INTRODUCTION**

The Arbitrator's decision was straightforward and based on undisputed facts. The Arbitrator based his decision on the undisputed fact that Dr. Hartford violated the Stipulated

REPLY TO PLAINTIFFS' MEMORANDUM IN OPPOSITION TO DEFENDANT'S APPLICATION FOR  
CONFIRMATION OF ARBITRATION AWARD AND REPLY IN SUPPORT OF PLAINTIFFS' MOTION TO  
VACATE ARBITRATOR'S AWARD- 1

00203

Order by drinking in 2003, triggering the Special Endorsement that voided coverage for the Harrison's claims against Dr. Hartford. The Arbitrator correctly observed that the Board of Medicine found the "fact that [Dr. Hartford] was drinking alcohol, in violation of his Stipulations and Board Orders, is not in dispute." (Affidavit of Chad Nicholson, Ex. B (Affidavit of Erica Phillips in Support of Motion for Summary Judgment ("Phillips Arb. Aff."), Ex. A, p. 19) (emphasis added). Based on these undisputed facts, the Arbitrator held as follows:

At the time of Dr. Hartford's violation of the order and stipulation, he violated the special endorsement and Underwriter's was under no further obligation or duty to defend and because of the violation there was no duty to indemnify. Because of this determination that Dr. Hartford had violated the special endorsement, and the coverage as to the Harrisons' malpractice claim was void, there was no breach of contract and the Harrisons' causes of action are dismissed.

(Affidavit of Eric S. Rossman in Support of Plaintiffs' Motion to Vacate Arbitrator's Award ("Rossman Aff.", Ex. A, p. 4). The Arbitrator's decision is logical, based on undisputed facts, and under either the Idaho Uniform Arbitration Act ("IAA") or Federal Arbitration Act ("FAA") unassailable.

Plaintiffs have conceded that these facts are undisputed (Memorandum in Opposition to Defendant's Application for Confirmation of Arbitration Award and Reply Memorandum in Support of Plaintiffs' Motion to Vacate Arbitrator's Award ("Memo in Opp."), p. 10 ("There was never any dispute that the Stipulated Order had been violated) The Arbitrator found that Dr. Hartford's drinking triggered the application of the Special Endorsement contained in the insurance policy. Again, Plaintiffs have conceded this is correct. (*Id.* at p. 11) (conceding that it "is true" that Dr. Hartford's "violation of the Stipulated Order triggered the application of the

Special Endorsement contained in Dr. Hartford's policy.") The Arbitrator's Decision is thereby legally and factually supportable.

Plaintiffs have failed to meet the heavy burden necessary to vacate the Arbitrator's award. They cannot win by attacking the legal or factual basis of his decision. Nor can they win by their attempts to sully the reputation of the Arbitrator. None of these establish the elements required to vacate the arbitration award under the IAA, or to the extent it even applies, the FAA.

## **II. PLAINTIFFS AGREED TO PROCEED UNDER THE IAA**

Plaintiffs' attorney avers that he never agreed to proceed under the IAA, either expressly or otherwise. (Second Affidavit of Eric S. Rossman in Support of Plaintiffs' Motion to Vacate Arbitrator's Award and in Opposition to Defendant's Application for Confirmation of Arbitration Award ("2nd Rossman Aff."), ¶ 4) However, Plaintiffs' attorney does not challenge the fact that he received a letter from Underwriters' counsel stating that, unless Plaintiffs made an objection, the dispute would be governed by the IAA. (Affidavit of Matthew C. Parks in Support of Application for Confirmation of Arbitration Award ("Parks Aff."), Ex. C)

After receiving this letter, Plaintiffs counsel had reason to believe that his silence on the subject would be taken as assent to proceeding under the IAA. In fact, the letter specifically requested action by Plaintiffs if they disagreed with the expressed intention to proceed under the IAA. (*Id.*) Rather than object, Plaintiffs remained silent. Under Idaho law, when a party is presented with a situation where assent would be manifested by silence and fails to object, the terms of the agreement are deemed to be accepted. *Eimco Div., Envirotech Corp. v. United Pacific Ins. Co.*, 109 Idaho 762, 764, 710 P. 2d 672, 674 (Ct. App. 1985). Beyond after the fact

self-serving statements, Plaintiffs have presented no evidence of their intent to reject Underwriters' proposal to proceed under the IAA. Plaintiffs only invoked the FAA after they received the Arbitrator's adverse decision and they needed additional, but ultimately inapplicable, avenues afforded under federal arbitration law to challenge the decision. However, the parties agreed to proceed under the IAA, and Plaintiffs must abide by their agreement. Regardless, even under the FAA, the Plaintiffs can not prevail.

### **III. ANALYSIS OF PLAINTIFFS' ARGUMENTS**

Plaintiffs have presented the Court with a hodgepodge of reasons and arguments to vacate the arbitration award. None of these arguments meet the burden required under the IAA or the FAA to vacate Arbitrator's well reasoned and logical decision.

#### **A. Plaintiffs Have Conceded They Are Not Arguing That the Award Should be Vacated Due to Evident Partiality**

Even though Plaintiffs specifically accused Jim Gillespie of "inherent bias," and claimed there was "doubt as to the arbitrator's impartiality," Underwriters were apparently under the mistaken impression that Plaintiffs were arguing that the Arbitrator's decision should be vacated because "there was evident partiality ... or corruption in the Arbitrators." I.C. § 7-912; 9 U.S.C. § 10(3). Plaintiffs have now conceded that they are not proceeding under an evident partiality theory. (Memo in Opp., p. 6 ("In this case, Plaintiffs have not argued evident partiality")).

#### **B. Plaintiffs Failed to Establish Prejudicial Misconduct or Misbehavior by the Arbitrator**

Plaintiffs now argue, for the first time, that the Arbitrator engaged in misconduct or misbehavior warranting vacatur of the arbitration award. (*Id.*) Under both the IAA and the FAA, a party seeking to vacate an award because of misbehavior or misconduct must first prove the

misconduct and second that the misconduct substantially prejudiced them. Plaintiffs have not demonstrated the Arbitrator engaged in any "misconduct" or "misbehavior". Plaintiffs allege the Arbitrator failed to disclose his prior knowledge of Dr. Hartford's history of substance abuse and sub-standard care. But, Plaintiffs only speculate that the Arbitrator had this knowledge prior to January 2008, when the knowledge was disclosed. Plaintiffs cannot rely on mere speculation, conjecture, or innuendo when tasked with the burden of establishing misbehavior or misconduct on the part of the Arbitrator. *See, Desfosses v. Desfosses*, 120 Idaho 27, 29, 813 P.2d 366, 368 (Ct. App. 1991)("statements and mere conclusions ... may not be substituted for a statement of facts"). The Arbitrator told Rossman that he had no conflicts or biases at the time he was selected. Consequently, the evidence indicated that he did not have this knowledge when he was selected, but instead gained it at a later date and then promptly disclosed it.

The record before the Arbitrator contained overwhelming evidence that Dr. Hartford had a substance abuse problem and was accused of sub-standard care. Even if the Arbitrator learned of Dr. Hartford's substance abuse problem from an extra-judicial source, that knowledge could not possibly have substantially prejudiced the Plaintiffs. The Arbitrator, and everyone involved in the arbitration, already knew about Dr. Hartford's drinking problem, and claims against him for negligence.

Plaintiffs have emphasized that the Arbitrator also learned from an extra-judicial source that Dr. Hartford had a reputation for substance abuse and providing sub-standard care. (Memo in Opp., p. 7) Whether or not this is true is irrelevant to the Arbitrator's decision. The Arbitrator was not tasked with determining if Dr. Hartford provided sub-standard care. Whether or not Dr.



Hartford provided any sub-standard care to any patient has no bearing on the undisputed fact that Dr. Hartford admitted to drinking in violation of the Stipulated Order and thereby lost coverage for the Harrison's claims. (Phillips Arb. Aff., Ex. A, p. 19-21)

Because Plaintiffs have provided no other evidence of alleged prejudice, they have failed to meet their burden. Plaintiffs' arguments fall far short of demonstrating that the Arbitrator engaged in any misconduct of misbehavior warranting vacation of the arbitration award.

Fairness is the touchstone of a determination of whether or not an arbitrator engaged in any misbehavior or misconduct. Plaintiffs have the burden of demonstrating that the alleged fact that the Arbitrator had some extra-judicial knowledge (which was disclosed by the Arbitrator) caused the denial of fundamental fairness and due process rights. The Ninth Circuit has held that an arbitration "hearing is fundamentally fair if it meets the 'minimum requirements of fairness'-adequate notice, a hearing on the evidence, ... [and an] impartial decision" *Sunshine Mining Co. v. United Steelworkers of Am.*, 823 F.2d 1289, 1295 (9th Cir.1987).

Courts are cautioned to tread lightly when considering whether or not Arbitrators engaged in conduct tantamount to misconduct denying a party a fundamentally fair due process proceeding. The court's power to review an arbitration panel award is quite limited; indeed, it is "among the narrowest known to the law." *ARW Exploration Corp. v. Aguirre*, 45 F.3d 1455, 1462 (10th Cir.1995). Courts are cautioned to set aside an arbitration award only in "very unusual circumstances." *Kelley v. Michaels*, 59 F.3d 1050, 1053 (10th Cir.1995).

Plaintiffs' allegations of misbehavior and misconduct on the part of the Arbitrator are unwarranted considering the fact that they were permitted to offer several hundred pages of written briefing and evidentiary materials to the Arbitrator, were given the opportunity to present oral arguments, and also permitted to present post-hearing briefing. In addition, the information was voluntarily disclosed by the Arbitrator in enough time to permit action by Plaintiffs before the award was made. In short, Plaintiffs were provided with a fundamentally fair forum to resolve their dispute. Plaintiffs disagreement with the Arbitrator's conclusions of law or findings of fact does not establish that the Arbitrator engaged in any misconduct or misbehavior warranting vacation of the arbitration award.

Everyone involved in the arbitration knew about Dr. Hartford's drinking problem and claims that he had given sub-standard care. Plaintiffs introduced the evidence establishing that Dr. Hartford's violation of the Stipulated Order was undisputed. The fact that the Arbitrator allegedly learned of Dr. Hartford's substance abuse problem from another source did not substantially prejudice the Plaintiffs considering the cumulative nature of the information. Plaintiffs have failed to demonstrate substantial prejudice and have thus failed to demonstrate any misbehavior or misconduct that would warrant vacating the arbitration award under either I.C. § 7-912 or 9 U.S.C. § 10(3).

C. Arbitrator Did Not Manifestly Disregard the Facts

Plaintiffs incorrectly argue that the Arbitrator based his decision on the finding that Dr. Hartford had been practicing medicine while intoxicated. The Arbitrator did not reach that conclusion and did support his decision on that finding. As stated above, the Arbitrator based his

decision on two undisputed facts. First, that Dr. Hartford had been drinking in violation of the Stipulated Order. Second, that this violation triggered the Special Endorsement in his insurance policy with Underwriters. These undisputed facts are easily reconciled with the final decision that, according to the terms of the Special Endorsement, there was no coverage for the Harrisons' claims and Underwriters had no further duty to defend and no duty to indemnify.

Plaintiffs are confused by the Arbitrator's dicta that Dr. Hartford had been drinking "at the time he was treating Mr. Harrison." (Rossman Arb. Aff., Ex. A., p. 4) This finding relates only to Underwriter's alternative argument that, if for some reason the Stipulated Order endorsement did not apply, the defense-only exclusion applies. This exclusion applies when there are allegations that the doctor was intoxicated while treating a patient. Here, given Mrs. Harrison's initial accusation that Dr. Hartford was drinking while treating Mr. Harrison, her testimony that she smelled alcohol on his breath at that time and the Harrisons request for punitive damages in the underlying malpractice case based on Dr. Hartford's intoxication while he treated Mr. Harrison, it would have been well within the arbitrator's purview to find that the defense-only exclusion was triggered. This would have meant that Dr. Hartford was entitled to a defense but the \$1 million indemnity money would not be awarded. In any event, the Arbitrator's decision was based solely on the finding that Dr. Hartford violated the Stipulated Order by consuming alcohol in any amount after the Stipulated Order and before treating Mr. Harrison. Whether or not Dr. Hartford had been actually intoxicated while providing treatment did not factor into the Arbitrator's decision. He never determined whether the defense-only exclusion applied. It is not a legally dispositive fact upon which the Arbitrator relied. It was

merely dicta. Therefore, the Arbitrator did not manifestly disregard any legally dispositive facts in making his decision.

Plaintiffs mistakenly argue that there are only three possible outcomes that would flow from Dr. Hartford's triggering of the Special Endorsement:

1. The violation would void the policy and require Underwriters to tender back the premiums; or
2. The violation would allow Underwriters to cancel the policy, if the Arbitrator also determined whether Dr. Hartford had violated the Stipulated Order before the treatment provided to Plaintiff Ray Harrison; or
3. The violation of the Stipulated Order was related to the treatment of Plaintiff Ray Harrison, thereby triggering the defense-only exclusion.

(Memo. in Opp., p. 11-12) Plaintiffs fail to realize that there is at least one more possible outcome, namely the decision reached by the Arbitrator. The Arbitrator held as a matter of law that Dr. Hartford's triggering of the Special Endorsement by consuming alcohol at any time voided coverage for the Harrisons' claims against Dr. Hartford, but that the policy itself had not been rescinded. (Rossman Aff., Ex. A., p. 4) Therefore, Underwriters owed no duty to defend or indemnify the claims against Dr. Hartford by Ray and Julie Harrison, and were not required to tender back the premiums. (*Id.*) That legal decision comports with the undisputed facts and law.

#### D. The Arbitrator Did Not Manifestly Disregard the Law

In order to demonstrate the Arbitrator manifestly disregarded the law, Plaintiffs have the burden of demonstrating that the Arbitrator, "manifested an infidelity to his obligation to honestly interpret the contract." *Hecla Mining Co. v. Bunker Hill Co.*, <sup>101</sup>110 Idaho 557, 562, 617 P.2d 861, 868 (1980).

Plaintiffs have repeatedly mis-characterized the Arbitrator's decision by arguing that the

decision was based on the Arbitrator's factual finding that the Medical Review Board had determined that Dr. Hartford had been drinking while providing treatment to Plaintiff Ray Harrison. (*See, e.g.*, Memo. in Opp., p. 13) That is not correct. The Arbitrator recognized that he had a very discrete legal question to answer, namely the effect of Dr. Hartford violating the Stipulated Order. (Rossman Arb. Aff., Ex. A., p. 3 ("basic and overall issue in this arbitration proceeding is what was the effect of violating the stipulated order")) Plaintiffs admit that Dr. Hartford violated the order. They simply disagree with the Arbitrator's decision on the legal effect of that violation. Mere disagreement with an arbitration award does not suffice to vacate the award. Arbitrators "have completely free rein to decide the law as well as the facts" and errors in either are not reviewed by the court under both the IAA and FAA. *See Commonwealth Coatings Corp., v. Continental Cas. Co.*, 393 U.S. 145, 148-49, 89 S.Ct. 337(1968).

Even under the "manifest disregard" standard, the Arbitrator's decision cannot be shaken from its bearings. Manifest disregard is not simply making a legal error, but rather is making a mistake that completely ignores established law or basing a decision that cannot be reconciled with the undisputed facts. *Collins v. D.R. Horton, Inc.*, 505 F.3d 874, 879-880 (9th Cir. 2007).

Plaintiffs have failed to demonstrate that the Arbitrator completely disregarded the law when he determined the effect of Dr. Hartford's violation of the Stipulated Order and the fact that the actions of Dr. Hartford triggered the Special Endorsement. Plaintiffs' argument hinges on their contention that the Arbitrator based his decision on the fact that the Board of Medicine found Dr. Hartford had been drinking on the job. (Memo. in Opp., p. 13) Plaintiffs are wrong. The Arbitrator's decision was based on the undisputed fact that Dr. Hartford violated the

Stipulated Order and triggered the Special Endorsement. Again, Plaintiffs conceded those facts are undisputed.

E. Arbitrator Did Not Exceed His Powers by Straying From Judicial Powers Granted Under the Idaho Rules of Civil Procedure

Plaintiffs have not demonstrated that the Arbitrator exceeded his powers. As laid out in Underwriters earlier briefing, the insurance policy granted the Arbitrator the power to decide all issues of fact and law involved in the dispute. (Memorandum in Support of Application for Confirmation of Arbitration Award and Opposition to Plaintiffs' Motion to Vacate Arbitrator's Award. ("Memo. in Support"), p. 18) The Arbitrator merely decided the issues presented to him by the parties and according to the scope of his powers dictated by the terms of the contract between Underwriters and Plaintiffs as the assignees of Dr. Hartford. Moreover, he did so based on the undisputed legal wording of the Special Endorsement and the conceded fact that Dr. Hartford consumed alcohol in violation of that Special Endorsement.

Plaintiffs contention that the Arbitrator exceeded his powers by not properly following the rules of civil procedure is more akin to a contention that the Arbitrator made an error of law than a contention that the Arbitrator exceeded his powers. Errors of law, under both the IAA and the FAA are unassailable. *See Commonwealth Coatings Corp. v. Continental Cas. Co.*, 393 U.S. at 148-49 (arbitrators "have completely free rein to decide the law as well as the facts and are not subject to appellate review). Idaho also follows the rule that upon review, "[an] arbitrator's decision is binding upon the court both as to questions of law and fact." *Cady v. Allstate Ins. Co.*, 113 Idaho 667, 671, 747 P.2d 76, 80 (Ct. App. 1987) (citing *Bingham County Com'n v. Interstate Elec. Co., a Div. of the L.E. Myers Co.*, 105 Idaho 36, 41-42, 665 P.2d 1046, 1051-52

REPLY TO PLAINTIFFS' MEMORANDUM IN OPPOSITION TO DEFENDANT'S APPLICATION FOR  
CONFIRMATION OF ARBITRATION AWARD AND REPLY IN SUPPORT OF PLAINTIFFS' MOTION TO  
VACATE ARBITRATOR'S AWARD- 11

(1983). If the Arbitrator failed to properly follow the Idaho Rules of Civil Procedure, (which Underwriter's disputes) such would be considered an error of law, which cannot be appealed.

#### **IV. CONCLUSION**

Plaintiffs present a myriad of arguments with one central theme, that the Arbitrator made a factual or legal error. However as stated in the prior submissions, a factual or legal error cannot be the basis of vacating an arbitration award. The errors alleged by the Plaintiffs do not raise to the level of a manifest disregard for the law or facts, nor did the Arbitrator exceed his powers. The Arbitrator simply took undisputed facts and rendered a legal decision on those undisputed facts. The decision is unassailable under the IAA, which does not recognize manifest disregard as a basis for vacating an arbitration award. In any event, because Plaintiffs have failed to establish manifest disregard of either law or fact the decision cannot be vacated under the FAA.

Plaintiffs have failed to demonstrate the arbitration proceedings were fundamentally unfair. Their contention that the Arbitrator committed misbehavior or misconduct is belied by the facts. Plaintiffs received a fair hearing on their dispute. The fact that Plaintiffs' arguments were not found meritorious by the Arbitrator does not consequently mean the decision was rendered unfairly. Plaintiffs have failed to demonstrate any action by the Arbitrator that rises to the level of misconduct or misbehavior. Indeed, Plaintiffs failed to demonstrate any substantial prejudice stemming from what they allege to be misconduct or misbehavior by the Arbitrator. Regardless, Plaintiffs waived any claim of prejudice or unfairness when they chose to wait for the decision before challenging the process.

Plaintiffs have failed to meet the burdens imposed under the IAA (or even the FAA) for

vacation of the arbitration award. The Court should deny Plaintiffs' motion and confirm the arbitration award, and award Underwriters all costs and fees incurred in confirming the award pursuant to I.C. §7-914.

DATED this 15 day of May, 2008.

ELAM & BURKE, P.A.

By: 

Jeffrey A. Thomson, of the firm  
Attorneys for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 15 day of May, 2008, I caused a true and correct copy of the foregoing document to be served as follows:

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Jeffrey A. Thomson

REPLY TO PLAINTIFFS' MEMORANDUM IN OPPOSITION TO DEFENDANT'S APPLICATION FOR  
CONFIRMATION OF ARBITRATION AWARD AND REPLY IN SUPPORT OF PLAINTIFFS' MOTION TO  
VACATE ARBITRATOR'S AWARD- 13

00215



JUL 28 2008

J. DAVID NAVARRO, Clerk  
By \_\_\_\_\_ INGA JOHNSON  
DEPUTY CLERK

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

H. RAY HARRISON and JULIE  
ANDERSON, husband and wife,

Plaintiffs,

vs.

CERTAIN UNDERWRITERS AT  
LLOYD'S, LONDON SUBSCRIBING  
TO POLICY NO. 20056 ISSUED TO  
JEFFREY HARTFORD, M.D.  
EFFECTIVE FROM JUNE 1, 2004, TO  
JUNE 1, 2005, WITH A  
RETROACTIVE EFFECTIVE DATE  
OF JUNE 1, 2003; NAS INSURANCE  
SERVICES INC., a California  
Corporation,

Defendant.

Case No. CV PI 06 15687

**ORDER**

This matter comes before the Court on the Plaintiffs' motion to vacate the arbitrator's award, filed on April 17, 2008. Shortly thereafter, the Defendants filed an application for confirmation of arbitration award, pursuant to I.C. § 7-914, which the Plaintiffs opposed. The issues presented to the Court are whether the Federal Arbitration Act (FAA) or the Idaho Uniform Arbitration Act (IAA) governed this case, and then, whether the Court should vacate the arbitration award on the grounds that the arbitrator was biased, failed to comply with the normal standards for summary judgment, or issued a decision that was manifestly unjust. The Court holds that the IAA governed this case and hereby denies the motion to vacate the arbitrator's award, thereby confirming the arbitration award.

1  
2 Traditionally, the Federal Arbitration Act applies in all cases involving arbitration in which  
3 the underlying transaction affects interstate commerce; however, where parties have expressly  
4 agreed that Idaho law will govern arbitration, the Idaho Uniform Arbitration Act, not the FAA,  
5 applies as the substantive law in arbitration. 9 U.S.C.A. § 2; I.C. § 7-901 et seq.; *Moore v.*  
6 *Omnicare, Inc*, 141 Idaho 809, 118 P.3d 141 (Idaho 2005). Thus, the remaining question is whether  
7 the parties expressly agreed to the IAA.

8 Early in this case, the Defendants sent a letter to the Plaintiffs expressing their intent to  
9 pursue the arbitration under the authority of the IAA. The Plaintiffs moved forward with the case  
10 without responding to the Defendants' letter, thereby agreeing to the IAA by silence. Therefore, the  
11 parties agreed to apply the Idaho Arbitration Act where the Plaintiff acquiesced by silence.  
12

13 Under the Idaho Uniform Arbitration Act, a court reviewing an arbitrator's decision is  
14 bound by the arbitrator's findings both as to questions of law and fact. *Driver v. SI Corp.*, 139 Idaho  
15 423, 80 P.3d 1024 (Idaho 2003); citing *Hughes v. Hughes*, 123 Idaho 711, 713, 851 P.2d 1007,  
16 1009 (Ct.App.1993). When asked to review an arbitrator's award, a court is limited to an  
17 examination of the grounds of relief stated in § 7-912 of the IAA: "(1) the award was procured by  
18 corruption, fraud or other undue means; (2) there was evidence of partiality by an arbitrator; (3) the  
19 arbitrators exceeded their powers; (4) the arbitrators refused to postpone the hearing to the prejudice  
20 of a party; and (5) there was no arbitration agreement and the party did not participate in the hearing  
21 without objecting." *Bingham County Comm'n v. Interstate Electric Co.*, 105 Idaho 36, 42, 665 P.2d  
22 1046, 1052 n. 7 (1983).  
23

24 The Plaintiff argued that the Court should vacate the arbitration award for three reasons.  
25 First, the Plaintiff's counsel alleges that the arbitrator expressed some indirect bias towards the  
26

1 Plaintiffs after the case had been submitted to the arbitrator for a decision. Second, the arbitrator  
2 allegedly failed to comply with the normal standards for summary judgment because he made  
3 findings of fact as to whether the evidence supported a rescission of the insurance policy or whether  
4 it only denied the Plaintiffs' claim. Last, he made a factual finding unsupported in the record.

5 The Court finds that the Plaintiffs have not established that the arbitrator was biased when  
6 he made his decision and the Plaintiffs waived their ability to make this argument because they  
7 failed to object to the arbitrator serving on this case despite the opportunity to do so. Second, the  
8 arbitrator did not exceed his powers because the parties were bound by their arbitration agreement  
9 and the agreement allowed the arbitrator broad authority. Last, the arbitrator's factual findings  
10 were appropriate under the Idaho Rules of Civil Procedure.

11 Therefore, the Court denies the motion to vacate the arbitrator's award and confirms the  
12 arbitration award.  
13

14 IT IS SO ORDERED.

15 Dated this 28<sup>th</sup> day of July 2008.

16  
17  
18  
19 Ronald J. Wilber  
20 DISTRICT JUDGE  
21  
22  
23  
24  
25  
26

CERTIFICATE OF MAILING

I, HEREBY CERTIFY that on the 29 day of July 2008, I caused a true and correct copy of the foregoing ORDER to be served by the method indicated below, and addressed to the following:

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Erica S. Phillips  
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Matthew C. Parks  
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J. DAVID NAVARRO  
Clerk of the District Court  
Ada County, Idaho

By INGA JOHNSON  
Deputy Clerk

AUG 11 2008

J. DAVID NAVARRO, Clerk

By [Signature] DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

H. RAY HARRISON and JULIE  
HARRISON, husband and wife,

Plaintiffs,

vs.

CERTAIN UNDERWRITERS AT LLOYD'S  
LONDON SUBSCRIBING TO POLICY NO.  
20056 ISSUED TO JEFFREY HARTFORD,  
M.D. EFFECTIVE FROM JUNE 1, 2004 TO  
JUNE 1, 2005 WITH AN RETROACTIVE  
EFFECTIVE DATE OF JUNE 1, 2003; NAS  
INSURANCE SERVICES, INC., a California  
corporation,

Defendants.

Case No. CV PI 0615687

JUDGMENT

The Court hereby enters Judgment against H. Ray Harrison and Julie Harrison in favor of Defendants Certain Underwriters at Lloyd's London Subscribing to Policy No. 20053 Issued to Jeffrey Hartford, M.D. Effective from June 1, 2004 to June 1, 2005 With an Retroactive Effective Date of June 1, 2003 and NAS Insurance Services, Inc. The Court directs Defendants to file a memorandum of costs and fees in an amount to be proven pursuant to Idaho Code § 7-914.

DATED this 10<sup>th</sup> day of August, 2008.

[Signature]  
Honorable Ronald J. Wilper  
Ada County District Judge

JUDGMENT - 1

00220

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 11 day of August, 2008, I caused a true and correct copy of the foregoing document to be served as follows:

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J. DAVID NAVARRO

J. DAVID NAVARRO

Deputy Clerk

NO. \_\_\_\_\_  
A.M. \_\_\_\_\_ 4:15  
SEP 11 2003  
J. DAVID HARRISON, Cler  
BY J. HARRISON  
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Attorneys for Plaintiffs/Appellants

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

H. RAY HARRISON AND JULIE  
HARRISON, husband and wife,

Plaintiffs/Appellants,

-vs-

CERTAIN UNDERWRITERS AT LLOYD'S,  
LONDON SUBSCRIBING TO POLICY NO.  
20056 ISSUED TO JEFFREY HARTFORD,  
M.D. EFFECTIVE FROM JUNE 1, 2004 TO  
JUNE 1, 2005 WITH AN RETROACTIVE  
EFFECTIVE DATE OF JUNE 1, 2003; NAS  
INSURANCE SERVICES INC., a California  
corporation,

Defendants/Respondents.

0615687  
CASE NO. CV PI-0500443

NOTICE OF APPEAL

Fee Category: T

Filing Fee: \$101.00

TO: THE ABOVE NAMED RESPONDENTS, CERTAIN UNDERWRITERS AT LLOYD'S,  
LONDON SUBSCRIBING TO POLICY NO. 20056 ISSUED TO JEFFREY HARTFORD, M.D.  
EFFECTIVE FROM JUNE 1, 2004 TO JUNE 1, 2005 WITH AN RETROACTIVE EFFECTIVE  
DATE OF JUNE 1, 2003; and NAS INSURANCE SERVICES INC., a California corporation, AND

NOTICE OF APPEAL - 1

00222

THE PARTY'S ATTORNEY, JEFFREY A. THOMSON, ELAM & BURKE, P.A. Post Office  
Box 1539 Boise, ID 83701, AND THE CLERK OF THE ABOVE ENTITLED COURT

NOTICE IS HEREBY GIVEN THAT:

1. The above named appellants, Ray and Julie Harrison, appeal against the above named respondent to the Idaho Supreme Court from the Judgment entered in the above entitled action on the 11th day of August, 2008, Honorable Judge Ronald Wilper presiding.

2. That the parties have a right to appeal to the Idaho Supreme Court, and the judgments or orders described in paragraph 1 above are appealable orders under and pursuant to Rule 11(a)(8) I.A.R.

3. That the issues appellants intend to assert on appeal are:

- a. Did the district court err in finding that the Uniform Arbitration Act applied to this case rather than the Federal Arbitration Act?
- b. Did the district court err in finding that Plaintiffs had waived any claim of misconduct by the arbitrator?
- c. Did the district court err in finding that the arbitrator had not exceeded his powers in the arbitration?
- d. Did the district court err in affirming the arbitration award in favor of Defendants?

4. Has an order been entered sealing all or any portion of the record? No.

5. (a) Is a reporter's transcript requested? YES  
(b) The appellants request the preparation of the following portions of the reporter's transcript:

The transcript of the hearing on Plaintiffs' Motion to Vacate Arbitration Award and Defendants' Motion to Affirm Award held on May 19, 2008.

6. The appellants request the following documents to be included in the clerk's record in addition to those automatically included under Rule 28, I.A.R.

- (a) Plaintiffs' Motion to Vacate Arbitration Award filed April 17, 2008;



- (b) Plaintiffs' Memorandum in Support of Plaintiffs' Motion to Vacate Arbitration Award, filed April 17, 2008;
- (c) Affidavit of Chad M. Nicholson in Support of Plaintiffs' Motion to Vacate Arbitration Award, filed April 17, 2008.
- (d) Affidavit of Eric S. Rossman in Support of Plaintiffs' Motion to Vacate Arbitrator's Award, filed April 17, 2008.
- (e) Defendants' Motion to Lift Stay of Proceedings, filed April 24, 2008.
- (f) Defendant's Application for Confirmation of Arbitration Award, filed April 24, 2008
- (g) Affidavit of Matthew C. Parks in Support of Application for Confirmation of Arbitration Award and in Opposition to Plaintiffs' Motion to Vacate Arbitration Award, filed May 1, 2008.
- (h) Memorandum in Support of Application for Confirmation of Arbitration Award and in Opposition to Plaintiffs' Motion to Vacate Arbitrator's Award, filed May 5, 2008.
- (i) Plaintiffs' Memorandum in Opposition to Defendants' Application for Confirmation of Arbitration Award and Reply Memorandum in Support of Motion to Vacate Arbitration Award, filed May 12, 2008.
- (j) Second Affidavit of Eric S. Rossman in Support of Plaintiffs' Motion to Vacate Arbitrator's Award and in Opposition to Defendants' Application for Confirmation of Arbitration Award, filed May 12, 2008.
- (k) Reply to Plaintiffs' Memorandum in Opposition to Defendants' Application for Confirmation of Arbitration Award and Reply in Support of Plaintiffs' Motion to Vacate Arbitrator's Award.
- (l) Defendants' Post Hearing Brief re: Opposition to Motion to Vacate Arbitration Award, filed May 23, 2008.
- (m) Plaintiffs' Supplemental Memorandum in Support of Plaintiffs' Motion to Vacate Arbitrator's Award.
- (n) Order, filed July 28, 2008.

7. I certify:

(a) That a copy of this notice of appeal has been served on the reporter.

(b)(1) That the clerk of the district court or administrative agency has been paid the estimated fee for the preparation of the reporter's transcript.

(c)(1) That the estimated fee for preparation of the clerk's or agency's record has been paid.

(d)(1) That the appellate filing fee has been paid.

(e) That service has been made upon all parties required to be served pursuant to Rule 20.

DATED THIS 11<sup>th</sup> day of September, 2008.

ROSSMAN LAW GROUP, PLLC


Erica S. Phillips  
for Eric S. Rossman  
Attorney for Appellants

### CERTIFICATE OF SERVICE

I hereby certify that on this 11<sup>th</sup> day of September, 2008, I caused to be served a true and correct copy of the foregoing document by the method indicated below to the following:

<u>✓</u>	US Mail	Jeffrey A. Thomson
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<u>      </u>	Facsimile	Post Office Box 1539
	No.(208) 384-5844	Boise, ID 83701

<u>✓</u>	US Mail	Dianne Cromwell
<u>      </u>	Overnight Mail	Ada County Courthouse
<u>      </u>	Hand Delivery	200 West Front Street
<u>      </u>	Facsimile	Boise, ID 83702



Eric S. Rossman

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Thomson - ISB #3380  
Parks - ISB #7419

Attorneys for Defendants/Respondents

NO. \_\_\_\_\_  
FILED \_\_\_\_\_  
A.M. \_\_\_\_\_ P.M. 4

SEP 24 2008

J. DAVID NAVARRO, Clerk  
By KATHY J. BIEHL  
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

H. RAY HARRISON and JULIE  
HARRISON, husband and wife,

Plaintiffs/Appellants,

vs.

CERTAIN UNDERWRITERS AT  
LLOYD'S LONDON SUBSCRIBING TO  
POLICY NO. 20056 ISSUED TO JEFFREY  
HARTFORD, M.D. EFFECTIVE FROM  
JUNE 1, 2004 TO JUNE 1, 2005 WITH AN  
RETROACTIVE EFFECTIVE DATE OF  
JUNE 1, 2003; NAS INSURANCE  
SERVICES, INC., a California corporation,

Defendants/Respondents.

Case No. CV PI 0615687

RESPONDENTS' REQUEST FOR  
ADDITIONAL CLERK'S RECORD

TO: THE ABOVE NAMED APPELLANT AND THE PARTIES' ATTORNEYS, AND THE  
CLERK OF THE ABOVE ENTITLED COURT:

RESPONDENTS' REQUEST FOR ADDITIONAL CLERK'S RECORD - 1

00227



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 24 day of September, 2008, I caused a true and correct copy of the foregoing document to be served as follows:

Eric S. Rossman  
Erica S. Phillips  
ROSSMAN LAW GROUP, PLLC  
737 North 7th Street  
Boise, ID 83702

☒ U.S. Mail  
☐ Hand Delivery  
☐ Federal Express  
☐ Facsimile – 208-342-2170

James A. McGuire  
MENDES & MOUNT, LLP  
750 Seventh Avenue  
New York, NY 10019-6829

☒ U.S. Mail  
☐ Hand Delivery  
☐ Federal Express  
☐ Facsimile – 212-261-8750

  
\_\_\_\_\_  
Jeffrey A. Thomson

OCT 10 2008

J. DAVID NAVARRO, C

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

H. RAY HARRISON and JULIE  
HARRISON, husband and wife,

Plaintiffs,

vs.

CERTAIN UNDERWRITERS AT  
LLOYD'S LONDON SUBSCRIBING TO  
POLICY NO. 20056 ISSUED TO JEFFREY  
HARTFORD, M.D. EFFECTIVE FROM  
JUNE 1, 2004 TO JUNE 1, 2005 WITH AN  
RETROACTIVE EFFECTIVE DATE OF  
JUNE 1, 2003; NAS INSURANCE  
SERVICES, INC., a California corporation,

Defendants.


Case No. CV PI 0615687

AMENDED JUDGMENT

ORIGINAL

The Court hereby enters an Amended Judgment against H. Ray Harrison and Julie Harrison in favor of Defendants Certain Underwriters at Lloyd's London Subscribing to Policy No. 20053 Issued to Jeffrey Hartford, M.D. Effective from June 1, 2004 to June 1, 2005 With an Retroactive Effective Date of June 1, 2003 and NAS Insurance Services, Inc. The Court entered an Order granting Defendants' request for attorney fees in the amount of Eleven Thousand Two Hundred Forty Five Dollars and Fifty Cents (\$11,245.50). The Court hereby enters Judgment against Plaintiffs in the amount of \$11,245.50.

DATED this 9<sup>th</sup> day of October, 2008.

  
\_\_\_\_\_  
Honorable Ronald J. Wilper  
Ada County District Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 14 day of October, 2008, I caused a true and correct copy of the foregoing document to be served as follows:

Eric S. Rossman  
Erica S. Phillips  
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737 North 7th Street  
Boise, ID 83702

☒ U.S. Mail  
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New York, NY 10019-6829

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☐ Federal Express  
☐ Facsimile

Jeffrey A. Thomson  
Matthew C. Parks  
ELAM & BURKE, P.A.  
P.O. Box 1539  
Boise, ID 83701

☒ U.S. Mail  
☐ Hand Delivery  
☐ Federal Express  
☐ Facsimile

J. DAVID NAVARRO

INDIA JOHNSON

Deputy Clerk



IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

H. RAY HARRISON and JULIE HARRISON,  
husband and wife,

Plaintiffs-Appellants,

vs.

CERTAIN UNDERWRITERS AT LLOYD'S  
LONDON SUBSCRIBING TO POLICY NO.  
20056 ISSUED TO JEFFREY HARTFORD, M.D.  
EFFECTIVE FROM JUNE 1, 2004 TO JUNE 1,  
2005 WITH AN RETROACTIVE EFFECTIVE  
DATE OF JUNE 1, 2003; NAS INSURANCE  
SERVICES, INC., a California corporation,

Defendants-Respondents.

Supreme Court Case No. 35678

CERTIFICATE OF EXHIBITS

I, J. DAVID NAVARRO, Clerk of the District Court of the Fourth Judicial District of the  
State of Idaho in and for the County of Ada, do hereby certify:

There were no exhibits offered for identification or admitted into evidence during the  
course of this action.

I FURTHER CERTIFY, that the following documents will be submitted as EXHIBITS to  
the Record:

1. Affidavit Of Jeffrey A. Thomson in Support Of Underwriters' Motion For Stay Of  
Proceedings And To Compel Arbitration, filed November 13, 2006.
2. Memorandum In Support Of Underwriters' Motion For Stay Of Proceedings And To  
Compel Arbitration, filed November 13, 2006.
3. Affidavit Of Chad M. Nicholson In Support Of Plaintiffs' Motion To Vacate Arbitrator's  
Award, filed April 17, 2008.
4. Affidavit Of Eric S. Rossman In Support Of Plaintiffs' Motion To Vacate Arbitrator's  
Award, filed April 17, 2008.
5. Memorandum In Support Of Plaintiffs' Motion To Vacate Arbitrator's Award, filed  
April 17, 2008.
6. Affidavit Of Matthew C. Parks In Support Of Application For Confirmation Of  
Arbitration Award And In Opposition To Plaintiffs' Motion To Vacate Arbitration  
Award, filed May 1, 2008.

CERTIFICATE OF EXHIBITS

00232

7. Memorandum In Support Of Application For Confirmation Of Arbitration Award And Opposition To Plaintiffs' Motion To Vacate Arbitrator's Award, filed May 5, 2008.
8. Second Affidavit Of Eric S. Rossman In Support Of Plaintiffs' Motion To Vacate Arbitrator's Award And In Opposition To Defendants' Application For Confirmation Of Arbitration Award, filed May 12, 2008.
9. Memorandum In Opposition To Defendants' Application For Confirmation Of Arbitration Award And Reply Memorandum In Support Of Plaintiffs' Motion To Vacate Arbitrator's Award, filed May 12, 2008.
10. Post Hearing Brief Re: Opposition To Motion To Vacate Arbitration Award, filed May 23, 2008.
11. Supplemental Memorandum In Support Of Plaintiffs' Motion To Vacate Arbitrator's Award, filed May 27, 2008.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 7th day of November, 2008.

J. DAVID NAVARRO  
Clerk of the District Court

By BRADLEY J. THIES  
Deputy Clerk

**SEAL**

CERTIFICATE OF EXHIBITS

00233

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

H. RAY HARRISON and JULIE HARRISON,  
husband and wife,

Plaintiffs-Appellants,

vs.

CERTAIN UNDERWRITERS AT LLOYD'S  
LONDON SUBSCRIBING TO POLICY NO.  
20056 ISSUED TO JEFFREY HARTFORD, M.D.  
EFFECTIVE FROM JUNE 1, 2004 TO JUNE 1,  
2005 WITH AN RETROACTIVE EFFECTIVE  
DATE OF JUNE 1, 2003; NAS INSURANCE  
SERVICES, INC., a California corporation,

Defendants-Respondents.

Supreme Court Case No. 35678

CERTIFICATE OF SERVICE

I, J. DAVID NAVARRO, the undersigned authority, do hereby certify that I have  
personally served or mailed, by either United States Mail or Interdepartmental Mail, one copy of  
the following:

CLERK'S RECORD AND REPORTER'S TRANSCRIPT

to each of the Attorneys of Record in this cause as follows:

ERICA S. PHILLIPS

ATTORNEY FOR APPELLANT

BOISE, IDAHO

JEFFREY A. THOMSON

ATTORNEY FOR RESPONDENT

BOISE, IDAHO

J. DAVID NAVARRO  
Clerk of the District Court

Date of Service: NOV 10 2008

By BRADLEY J. THIES  
Deputy Clerk

**SEAL**

CERTIFICATE OF SERVICE

00234

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

H. RAY HARRISON and JULIE HARRISON,  
husband and wife,

Plaintiffs-Appellants,

vs.

CERTAIN UNDERWRITERS AT LLOYD'S  
LONDON SUBSCRIBING TO POLICY NO.  
20056 ISSUED TO JEFFREY HARTFORD, M.D.  
EFFECTIVE FROM JUNE 1, 2004 TO JUNE 1,  
2005 WITH AN RETROACTIVE EFFECTIVE  
DATE OF JUNE 1, 2003; NAS INSURANCE  
SERVICES, INC., a California corporation,

Defendants-Respondents.

Supreme Court Case No. 35678

CERTIFICATE TO RECORD

I, J. DAVID NAVARRO, Clerk of the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Ada, do hereby certify that the above and foregoing record in the above-entitled cause was compiled and bound under my direction as, and is a true and correct record of the pleadings and documents that are automatically required under Rule 28 of the Idaho Appellate Rules, as well as those requested by Counsels.

I FURTHER CERTIFY, that the Notice of Appeal was filed in the District Court on the 11th day of September, 2008.

J. DAVID NAVARRO  
Clerk of the District Court

By BRADLEY J. THIES  
Deputy Clerk

**SEAL**

CERTIFICATE TO RECORD

00235